

OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION

HEARING BEFORE THE SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY OF THE COMMITTEE ON ENERGY AND COMMERCE HOUSE OF REPRESENTATIVES ONE HUNDRED FOURTEENTH CONGRESS SECOND SESSION

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C O N T E N T S

	Page
Hon. Greg Walden, a Representative in Congress from the State of Oregon, opening statement	1
Hon. Anna G. Eshoo, a Representative in Congress from the State of Cali- fornia, opening statement	3
Hon. Fred Upton, a Representative in Congress from the State of Michigan, opening statement	5
Prepared statement	6
Hon. Frank Pallone, Jr., a Representative in Congress from the State of New Jersey, opening statement	7
Prepared statement	8

WITNESSES

Tom Wheeler, Chairman, Federal Communications Commission	9
Prepared statement	12
Answers to submitted questions ¹	107
Mignon L. Clyburn, Commissioner, Federal Communications Commission	19
Prepared statement	21
Answers to submitted questions	108
Jessica Rosenworcel, Commissioner, Federal Communications Commission	26
Prepared statement	28
Answers to submitted questions	114
Ajit Pai, Commissioner, Federal Communications Commission	32
Prepared statement	34
Answers to submitted questions	122
Michael O’Rielly, Commissioner, Federal Communications Commission	39
Prepared statement	41
Answers to submitted questions	129

SUBMITTED MATERIAL

Letter of July 11, 2016, from Laurence H. Tribe, et al., to Hon. John Thune, et al., on behalf of the International Center for Law & Economics, sub- mitted by Mr. Walden	83
Letter of July 12, 2016, from Ms. Clarke, Mr. Rush, and Mr. Butterfield to Thomas E. Wheeler, Chairman, Federal Communications Commission, submitted by Ms. Clarke	87
Statement of Global Automakers, et al., July 8, 2016, submitted by Mr. Upton	89
Report of May 9, 2016, “Understanding and Appreciating Zero-Rating: The Use and Impact of Free Data in the Mobile Broadband Sector,” Multicul- tural Media, Telecom and Internet Council, submitted by Mr. Butterfield	90
Letters of December 1, 2015, through June 15, 2016, from Members of Con- gress and Senators to Tom Wheeler, Chairman, Federal Communications Commission, ² submitted by Mr. Butterfield	

¹ Mr. Wheeler’s responses have been retained in committee files and also are available at <http://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=105179>.

² The information has been retained in committee files and also is available at <http://docs.house.gov/meetings/IF/IF16/20160712/105179/HHRG-114-IF16-20160712-SD005.pdf>.

OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION

TUESDAY, JULY 12, 2016

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY,
COMMITTEE ON ENERGY AND COMMERCE,
Washington, DC.

The subcommittee met, pursuant to call, at 10:18 a.m., in room 2123 Rayburn House Office Building, Hon. Greg Walden (chairman of the subcommittee) presiding.

Members present: Representatives Walden, Latta, Barton, Shimkus, Blackburn, Scalise, Lance, Guthrie, Olson, Pompeo, Kinzinger, Bilirakis, Johnson, Long, Collins, Cramer, Upton (ex officio), Eshoo, Doyle, Welch, Yarmuth, Clarke, Loeb sack, Rush, DeGette, Butterfield, Matsui, McNerney, Lujan, and Pallone (ex officio).

Staff present: Gary Andres, Staff Director; Elena Brennan, Staff Assistant; Rebecca Card, Assistant Press Secretary; Gene Fullano, Detailee, Communications and Technology; Theresa Gambo, Human Resources and Office Administrator; Jay Gulshen, Staff Assistant; Kelsey Guyselman, Counsel, Communications and Technology; Grace Koh, Counsel, Communications and Technology; David Redl, Chief Counsel, Communications and Technology; Charlotte Savercool, Professional Staff Member, Communications and Technology; Dan Schneider, Press Secretary; Gregory Watson, Legislative Clerk, Communications and Technology; Jeff Carroll, Democratic Staff Director; David Goldman, Democratic Chief Counsel, Communications and Technology; Jerry Leverich, Democratic Counsel; Lori Maarbjerg, Democratic FCC Detailee; Dan Miller, Democratic Staff Assistant; Matt Schumacher, Democratic Press Assistant; Ryan Skukowski, Democratic Senior Policy Analyst; Andrew Souvall, Democratic Director of Communications, Member Services, and Outreach.

OPENING STATEMENT OF HON. GREG WALDEN, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF OREGON

Mr. WALDEN. I call to order the Subcommittee on Communications and Technology. I want to thank the Chairman and the Commissioners for being here once again today. I think this is our sixth oversight hearing, probably more to come before the end of the year, just for scheduling purposes for all of you. Obviously, it is our important responsibility to continue to be in active dialogue with the Commission and its Chairman and those that we oversee. It is both our responsibility, our obligation, and a good opportunity—I was going to say “and a joy,” Anna says “fun”—to continue this. It

is a very important segment of our economy, as you know, with lots of issues at stake.

I want to just talk about several things that are on my mind this morning that I know the Commission is actively engaged in. One, as you know, Mr. Chairman, we have four, well, I don't know, since 2010 or so, complained about no update, meaningful update in the ownership rules. I am told that the Commission majority has now voted on that and I am also told that we probably won't see many changes when it comes to the ownership rules and regulations in the NPRM. And yet, the marketplace to me has changed dramatically since 2004. Further, the Congress has sent very specific views to the Commission through the legislative process that I hope have not been ignored when it comes to JSAs and other issues. That would be very disappointing.

Obviously, I know several of you are concerned about the future of 911 as are we. And we are also concerned about States identifying in your own reports that levying money from consumers for 911 purposes and then turnaround and spend it in non-911 related areas. And so I would like to get your views on that because we are not a blank check and neither are you the consumers. So ownership rules, 911, obviously pretty important when we look at things.

I would love to get an update from you on the incentive auction to the extent you can discuss that. Obviously, there are lots of issues related to the number of participating stations, the amount of spectrum available, and whether that meets up with capital. We all want to see a successful auction and I know you do too, and you and your teams have worked very, very hard in a very complicated part of the area.

Merger authority continues to be an issue. It has been brought to my attention by some that continue to be requirements put on either sales or mergers that my opinion I get right up on the line, not of extortion necessarily, but certainly pretty heavy handed. I think of one involving a broadcast sale where apparently there was a pending complaint about indecency and the people involved in the sale had to waive their rights of appeal, couldn't put money in escrow in order to get approval and I would like to know if that is true or not and why the Commission might have gone that way. Also, the over-billed requirements apparently in the Charter- Time Warner merger, I would be curious to know why that was necessary going forward.

Obviously, we remain concerned about communication among the Commissioners and the Chairman and vice versa and how that is going. We would love to get your update on your views of that from each of you and the sort of process reforms that we have talked about and in many cases in a bipartisan way legislated here at least through the House and kind of what you are seeing in terms of where the Commission is at from each of your perspectives.

I know having been both in the minority and the majority, it is a lot easier in the majority, but that is also where you have to maintain, it is your responsibility to maintain an open process with the minority to the extent you may have differences, but hopefully there is a fair opportunity for the minority to have their say. We try to do that here. Sometimes we are even successful at it. We

pass a lot of bipartisan legislation out of this subcommittee and full committee. It is always our intent to get to that point if we can.

So obviously, a lot of issues before us. I look forward to your testimony. With that, I would yield the balance of my time to the vice chair of the committee, Mr. Latta.

Mr. LATTI. Well, thank you very much, Mr. Chairman, for yielding, and thanks to our Commissioners for being with us today.

Lately, the Federal Communications Commission has proposed substantial rules without respect to their full effects and implications. The rules proposed on privacy requirements for broadband Internet service providers go beyond protecting consumers' data and fragments the current successful privacy framework established by the Federal Trade Commission.

Another example I am still very concerned with is the Commission's vision on the set-top box proposal. No one is opposed to the goal of promoting alternatives to pay TV provider set-top boxes, but the FCC's plan is not the answer for addressing consumer demands.

I am, however, encouraged that the Commission has seemed more open to making necessary changes to the Chairman's proposal. I urge the Commission to continue to work with the industry to develop an alternative plan that will foster competition and innovation while protecting small TV providers from onerous regulations, offer consumers more choice of privacy protection and safeguarding programming content and license agreements.

Concerning the Commission's integral role in this marketplace, we must be watchful of the regulatory policies it places on the communications and technology industries. Today's hearing is an opportunity to maintain proper oversight of the FCC, Mr. Chairman, and I look forward to today's hearing and I appreciate and I yield back.

Mr. WALDEN. The gentleman yields back the balance of his time. The Chair recognizes the gentlelady from California, the ranking member of the subcommittee, Ms. Eshoo, for opening comments.

OPENING STATEMENT OF HON. ANNA G. ESHOO, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA

Mr. ESHOO. Thank you, Mr. Chairman, for holding this oversight hearing. Good morning to you, Mr. Chairman, and the members of the Commission. It is good to see all of you.

This is the first oversight hearing since the Federal Appeals Court decision that upheld the FCC's net neutrality rules took place. I think and many think the ruling was a clear victory for the American people who believe in a free and open Internet and ensures that the Internet will remain a platform for innovation well into the future.

So congratulations to you, Mr. Chairman, to the Commissioners, to the staff, to all the public advocacy organizations and the millions of people that contacted the Commission.

The court's ruling also makes clear that the FCC is the sole Federal agency with authority to protect broadband users' privacy. Now some still argue that the Federal Trade Commission is the agency that should handle privacy protections for broadband. But

the fact is that the FTC lacks the authority to do so. Under the law today, only the FCC can protect broadband user privacy. We can have a debate over the details of what the FCC should put into place, but I think the authority question is settled.

Beyond privacy, the FCC has two other key issues it needs to act on before the end of the year. The first is opening up the set-top box market to more competition. The cable industry has put forward an alternative proposal and I am encouraged by the industry's recognition that competition is needed and that is actually required by law.

The second issue is special access reform. INCOMPAS and Verizon have come together in an unprecedented way to provide the FCC with a framework to promote competition in this market. And we are all grateful to Congressman Doyle for leading on this issue relentlessly for over a decade. It is over a decade, isn't it, Mike, at least that? Yes, it feels that way anyway.

So I urge the Commission to take advantage of the opportunities that the agreement presents to finally finish special access reform before the end of the year.

And finally, I think it is really a source of shame that the majority continues to attack the Lifeline Program. Now whether it is an attempt to put an artificial cap on the fund or legislation to outright strip support for mobile phone service, I think that message is very clear. The majority is willing to rip away lifesaving communication tools from our most vulnerable citizens, including the ability to dial 911. I don't know which Commissioner would be willing to give that up themselves.

So my thanks to Chairman Wheeler for his leadership, to each Commissioner for your work and for being here today, and I yield the remaining time that I have to Representative Doyle.

Mr. DOYLE. I want to thank you, Anna, for yielding to me. And, Mr. Chairman and the Commission, I want to add my voice to congratulate you on your victory last month in the U.S. Court of Appeals. I am glad to see the court affirmed what I and many of my colleagues have argued for years, that the FCC has the authority to ensure that the Internet remains an open platform for innovation and competition. This is a great victory for consumers and the Internet ecosystem at large.

There is one area that I believe merits investigation and it is the Anti-Competitive Zero Rating, particularly when it is married with restrictive data caps. These policies, I believe, have the potential to harm consumers and inhibit innovation. I would like to see the Commission take some action to address these harmful policies.

Finally, I want to also add my voice to urge the Commission. You have got three big things on the table to get done. And I would hope that the Commission finds a way to work together and get all three. Special access, I really don't want to go through another FCC Commissioner on special access and I think a solution is at hand. And I would urge you to follow through on that.

I also believe, like Anna, that there is a path forward on set-top boxes. There has been an alternative solution offered by cable that I think merits consideration and we should take a look at and with regards to privacy, I know it is tough. I know there are issues between FCC and FTC, but I do believe if you all work together that

there is a solution to be found, and I urge you to try to do that before you finish up your work this year. Thank you. I yield back.

Mr. WALDEN. The gentlelady yields back the balance of her time. The Chair recognizes the chairman of the full committee, the gentleman from Michigan, Mr. Upton.

OPENING STATEMENT OF HON. FRED UPTON, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MICHIGAN

Mr. UPTON. Thank you, Mr. Chairman. Chairman Wheeler, members of the Commission, thank you again for joining us.

Over the many times that we have convened, our message has been, my message has been consistent. The FCC has jurisdiction over one of the most important and vibrant sectors of our economy. Decisions are critical to innovation, jobs, and our Nation's leadership in global technology.

What you do and how you do it has tremendous impact on all of us today, tomorrow, and for lots of years to come. And it matters here in Washington. It matters at home in Michigan. It matters across the country.

We ask you to follow the lead of this committee and its pursuit to improve the FCC process for the betterment of all stakeholders. And dating back to the 112th Congress, we worked in a bipartisan way to usher H.R. 2583, the FCC Process Reform Act, through the House.

And we urge the agency to engage in a fair, open, transparent process in the execution of its mission. We stress that your loyalty to these things provides the certainty that nurtures innovation, investment, and job creation.

When we last met, the Chairman had recently presented his colleagues with a proposal to impose new requirements on the video subscription market and a new privacy regime for Internet service providers. These proposals have the potential to harm the very sectors that are attempting to preserve and stimulate and concerns continue to grow on both sides of the aisle.

American consumers across the country and job creators are concerned with continued innovation, investment, and job creation that the communications and technology industries have delivered in the past. If you approach these significant matters and all others in the last couple of months, do so with an eye towards the successful policies that have fostered the video market and the Internet that are the cornerstones of American society. It is not time to throw in the towel. There remain opportunities to work across the aisle to get things done that really impact consumers, resolving concerns about rural call completion, successfully completing the incentive auction, and preventing the waste, fraud, and abuse in the Universal Service Fund should be bipartisan issues that we can agree on.

Let us continue to work to the better, putting more of a premium on cooperation. There is a lot at stake and we need to get that done.

[The prepared statement of Mr. Upton follows:]

PREPARED STATEMENT OF HON. FRED UPTON

Chairman Wheeler and members of the Commission, thank you for joining us. Over the many times we have convened, my message has been consistent, the FCC has jurisdiction over one of the most important and vibrant sectors of our economy—its decisions are critical to innovation, jobs, and our Nation's leadership in global technology. What you do and how you do it has a tremendous impact on all of us—today, tomorrow, and for years to come. It matters here in Washington. It matters back home in Michigan. It matters everywhere.

We asked you to follow the lead of this committee in its pursuit to improve FCC process for the betterment of all stakeholders. Dating back to the 112th Congress, we've worked in a bipartisan way to usher H.R. 2583, the FCC Process Reform Act through the House. We urged for the agency to engage in fair, open, and transparent process in the execution of its mission. We stressed that your loyalty to these things provides the certainty that nurtures innovation, investment, and job creation.

Unfortunately, notwithstanding our repeated calls, all indications are that these requests have been ignored and that the FCC is broken—honest and vigorous policy debate, compromise, and collegiality are by all accounts absent on the eighth floor: an observation supported by the ever growing list of 3–2 votes. The agency has sadly become tainted by partisan politics, and seemingly lost its independence.

When we met last, the Chairman had recently presented his colleagues with a proposal to impose new requirements on the video subscription market and a new privacy regime for Internet service providers. These proposals have the potential to harm the very sectors they are attempting to preserve and stimulate, and concerns continue to grow from both sides of the aisle.

Folks back in Michigan, American consumers across the country, and job creators are concerned with continued innovation, investment, and job creation that the communications and technology industries have delivered in the past. As you approach these significant matters—and all others in these last months—do so with an eye toward the successful policies that have fostered the video market and Internet that are cornerstones of American society.

While the agency has lost its way, it's not time to throw in the towel. There remain opportunities to work across the aisle to get things done that really impact American consumers. Resolving concerns about rural call completion, successfully completing the incentive auction, and preventing waste, fraud, and abuse in the Universal Service Fund should be bipartisan issues. Let's continue working to do better. Putting more of a premium on cooperation than on partisanship. There is much at stake, and we all want a flourishing and functioning, truly independent agency to help guide our economy for years to come.

Mr. UPTON. I yield the balance of my time to Mrs. Blackburn.

Mrs. BLACKBURN. Thank you, Mr. Chairman. I join in welcoming each of you. We are so pleased that you are here. You have heard a myriad of issues that we are continuing to work on and appreciate that you would take the time to come and update and engage in conversations with us.

Today, I am going to focus much of my attention on the set-top box issue. This is something we are hearing a good bit about and I am pleased that independent programmers have come to you with what could be an alternative approach that would still protect content. I should say it would protect content.

For my content creators in Tennessee and individuals that I am hearing from, they are very concerned about this, not only in the domestic market, but what it would do to licensing agreements, et cetera, and their ability to work through this process. My content creators believe that if you create something, it is yours, and you deserve to be compensated on it.

So I am pleased that you are here to enter into this discussion. We appreciate so much your time and your preparation, and Mr. Chairman, I yield back.

Mr. WALDEN. The gentlelady yields the balance of her time. The Chair recognizes the gentleman from New Jersey, Mr. Pallone, ranking member of the full committee.

OPENING STATEMENT OF HON. FRANK PALLONE, JR., A REPRESENTATIVE IN CONGRESS FROM THE STATE OF NEW JERSEY

Mr. PALLONE. Thank you, Mr. Chairman. Today's hearing comes weeks after the FCC's sweeping net neutrality victory before the DC Circuit. The court's decision was a major victory for Internet consumers and small businesses and the ruling was a momentous step towards legal certainty that the Internet remains an open platform for everyone. It was also a strong recognition of pro-consumer and pro-innovation policies that Democrats have championed for years.

The court's decision helps create a stronger foundation for future policies that put consumers in the driver's seat.

And now as we look ahead, we still have a number of issues before us including how to deal with Internet privacy. A recent study by the National Telecommunications and Information Administration found 84 percent of Americans are worried about their privacy and security online. And we must take these concerns seriously. And I appreciate the Federal Trade Commission who oversees privacy on Web sites providing thoughtful input into the FCC's proceedings. We should give consumers more protection online and not less.

During this oversight hearing today, we are likely to hear more from our Republican colleagues about the Lifeline Program that keeps our Nation's low-income families connected. For months, Republicans have used charges of waste, fraud, and abuse to justify wrong-headed bills designed to rip phones away from those who need them the most.

This morning I am releasing a Democratic committee staff report that investigated the on-going Republican charges. The report found that Republican allegations of more than \$500 million in fraud are baseless, relying on unfounded assumptions and bad data. In order to get to their \$500 million claim, Republicans first assumed that every Lifeline recipient in a homeless shelter, in a veterans' group home, in a nursing home or just living with roommates to get by, that nearly every one of these people got their phone as a result of fraud. There is simply no way to justify these assumptions and it is incredibly counterproductive to any serious discussions on how to improve and strengthen this program.

Our report finds that most of the waste, fraud, and abuse that have plagued the program resulted from policies the FCC adopted during the Bush administration and while some waste, fraud, and abuse likely still does take place, the FCC has worked hard over the past few years to track it down and wipe it out. Nearly \$1 billion of unnecessary spending has been eliminated from the program as a result of the FCC's actions over the last 6 years.

So I will repeat what I have been saying for months. Lifeline is a successful program that helps more than ten million Americans and we need to protect it. If my colleagues are serious about eliminating waste, fraud, and abuse in the program, stop these over-the-

top accusations. Our report has a number of recommendations on productive ways to move forward. And so I encourage our Republican colleagues to work with us to make this critical program stronger.

[The prepared statement of Mr. Pallone follows:]

PREPARED STATEMENT OF HON. FRANK PALLONE, JR.

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The ruling was a momentous step toward legal certainty that the internet remains an open platform for everyone. It was also a strong recognition of pro-consumer and pro-innovation policies that Democrats have championed for years. The court's decision helps create a stronger foundation for future policies that put consumers in the driver's seat.

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Thank you to all of the Commissioners for testifying here today.

Mr. PALLONE. I would like to yield—well, I want to thank the Commissioners for testifying here today, and I will yield the remainder of my time to Congresswoman Clarke.

Ms. CLARKE. I thank the ranking member for yielding me time. I thank our chairman and ranking member for this morning's oversight hearing.

Mr. Chairman and FCC Commissioners, good morning. According to the U.S. Census Bureau, by the mid-2040s, if not before, America will be a majority minority nation, meaning that the majority of Americans will be non-European descent people of color. It is critical that his population has access to news, information, and en-

tertainment that is reflective of their experiences and their perspective. Without this representation, there is no voice reflective of their stories and without a voice, our cultural content suffers, thus decreasing cross-cultural communication and understanding.

My core concerns focus on equity and inclusion and the media and telecommunications industry. And I am particularly concerned that we are not doing enough to create parity for all stakeholders.

I recently formed the House Congressional Multi-Cultural Media Caucus where caucus members will offer suggestions and recommendations to the FCC to ensure that these tenets are considered when public policy decisions are being made. The goal is simple, to create economic sustainability and viability of multi-cultural media in any ecosystem. The owners of our Nation's media are shaping the public's narrative and it is important that it is inclusive in both representation on the airwaves, as well as ownership of its assets.

Thank you very much, Mr. Ranking Member, and I yield back the balance of my time, his time to him.

Mr. WALDEN. And he yields it back to the committee. So thank you all for your opening comments. We will go now to the Chairman and the Commissioners for their testimony.

And Mr. Chairman, we welcome you back before our subcommittee. And I think you have heard from members on both sides of the aisle about issues they are deeply concerned about and the direction of the FCC and we appreciate your being here to respond to those and any other comments you may have.

STATEMENTS OF TOM WHEELER, CHAIRMAN, FEDERAL COMMUNICATIONS COMMISSION; MIGNON L. CLYBURN, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION; JESSICA ROSENWORCEL, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION; AJIT PAI, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION; AND MICHAEL O'RIELLY, COMMISSIONER, FEDERAL COMMUNICATIONS COMMISSION

STATEMENT OF TOM WHEELER

Mr. WHEELER. Thank you very much, Mr. Chairman, Ranking Member, and all members of the committee.

Today is a special day, obviously, with this committee coming together. We also have to recognize it is a special day for another reason. It is Commissioner Rosenworcel's birthday today.

Mr. WALDEN. Happy birthday.

[Applause.]

Mr. WHEELER. We can find unanimity on that resolution.

Ms. ROSENWORCEL. Such a great way to spend my birthday here with you all.

[Laughter.]

Mr. WALDEN. Is there a hint of sarcasm?

Mr. WHEELER. I have three quick topics to address, some of which you also have raised, Mr. Chairman, and I look forward to have questions from you and the rest of the committee: the incentive auction, the national priority of 5G, and as you indicated, next-generation 911.

The incentive auction has sure put the lie to the claim that broadcasters wouldn't show up and participate. And the credit goes to this committee, your leadership, the ranking member's leadership for your foresight, vision, and leadership in creating this first in the world auction.

The broadcasters have made available 126 megahertz. And what is really significant is that 99 percent of all the licenses that would be created are unimpaired licenses. And we spent a lot of time together worrying about impairment issues. It is the world's first reverse auction. It worked flawlessly and kudos are owed to Gary Epstein and Howard Symons and the team that has been working literally for years to follow through on your instructions.

And now it is time to move on to the forward auction. For as long as I can remember—and I am sure you, too—the wireless industry has been pleading for more spectrum. Well, they got it, and it is beachfront spectrum at 600 megahertz. Our job is to create a market that makes that spectrum available. We now know the “ask” in that market, and we will soon know the bid.

We have received the up-front payments from the wireless carriers, qualifying them to bid. And we will shortly be issuing a PN, public notice, indicating who those bidders are.

If there is no bid ask alignment, we will start over with a reduced supply and we will keep working that until the market is made. Because of how licenses are assigned, the steps would be 120 megahertz, 114 megahertz, 108 megahertz, 84 megahertz. But I will remind everyone that the average of the FCC auctions over the years has been about 45 megahertz. So this is a big deal no matter what the number is.

The bottom line is that your mandate is under way. The decisions made in the design of the auction are working. The systems are functioning and a market has been created for the first time ever.

On Thursday, we will vote on another important spectrum issue to open up high-band spectrum for fifth generation wireless licensed and unlicensed spectrum. It is another world first. We will be the first nation to identify high-band 5G spectrum which means that in the last 2 years, we have made available low-band spectrum, mid-band spectrum, and high-band spectrum.

Europe, by comparison, is talking about how maybe by 2020 they will have low-band and mid-band and what their plans are for high-band are still very much up in the air.

Our leadership in this is a national priority. The 21st century belongs to high-speed, high-capacity, low-latency wireless networks. And if we are the first in the world to move as we are hopefully going to do on Thursday, we will create a home-field advantage for those American companies and American workers who are involved in infrastructure, software and services.

Our plan is to make the spectrum available and then get out of the way of the technology. The reality of our networks that we live in today is a reality that was created years ago, a decade ago, by decisions that were made or weren't made. The decision that we are going to make on Thursday will affect where this country is going to be for decades to come.

Lastly, every time that I have been before you, I have urged Congress to legislate, to protect public safety over the next-generation 911 capabilities. Mr. Chairman, thank you for raising it today. The Commission has gone about as far as our authority can take it. I know Commissioner Rosenworcel has been touring 911 facilities. She wrote a spot-on op-ed on the topic and I know she has some thoughts in her testimony. And I have some recommendations in my prepared text as well.

But here is the reality. Absent congressional action, there is no national program to improve public safety by applying the technology of next-generation 911. We are in the second decade of the 21st century and we are still relying on mid-20th century technology.

I appreciate the opportunity to be here, Mr. Chairman, and I look forward to engaging in discussion on any topics you may want to ask.

[The prepared statement of Mr. Wheeler follows:]

**Statement of
Tom Wheeler
Chairman
Federal Communications Commission
Before the
Subcommittee on Communications and Technology
United States House of Representatives**

**Hearing on
“Oversight of the Federal Communications Commission”
July 12, 2016**

INTRODUCTION

Chairman Walden, Ranking Member Eshoo, and Members of the Subcommittee, thank you for this opportunity to discuss our work at the Federal Communications Commission.

Since we last met three-and-a-half months ago, the Commission continues to make strong progress on our policy agenda in addition to receiving a landmark legal victory. While I am pleased with this progress, our work is far from done. I’ve said repeatedly that we’re going to run through the tape. The fact that this is an election year doesn’t stop the march of technological change. With each passing day, communications technology grows more important to our economy and quality of life. That means there’s no letting up at the Commission. We must continue to promote core values like universal access, public safety, consumer protection, and competition at the same bold pace we have consistently maintained.

This testimony recaps major developments since our March hearing, and then highlights some key priorities as we move forward.

RECENT DEVELOPMENTS

Open Internet Decision

On June 14, the D.C. Circuit upheld the FCC’s Open Internet Rules. The court’s ruling is a victory for consumers and innovators who deserve unfettered access to the entire web, and it ensures the internet remains a platform for unparalleled innovation, free expression, and economic growth. After a decade of debate and legal battles, this ruling affirms the Commission’s ability to enforce the strongest possible internet protections – both on fixed and mobile networks – that will ensure the internet remains open, now and in the future.

Incentive Auction

On March 29, the world’s first incentive auction officially commenced as participating broadcasters made their initial bid commitments. The auction system performed without a hitch, and, two weeks ago, bidding in the reverse auction closed, ending the initial stage of this landmark undertaking. Here’s where things stand.

The high level of broadcaster commitments enabled the Commission to set a spectrum clearing target of 126 MHz in the forward auction, with 99 percent of all licenses to be offered in the forward auction completely free of any impairments. Winning bids in the reverse auction totaled \$86.4 billion, establishing the clearing cost for repurposing this licensed and unlicensed spectrum for wireless data use.

The Commission received completed applications from potential participants in the forward auction, and applicants that made upfront payments by July 1st became qualified to bid in the forward auction.

The auction is a market-based mechanism for matching supply with demand. Until the forward bidding concludes, we will not know whether the demand meets the large supply offered by broadcasters. Depending upon that response, it's possible that we would need to move to additional stages to find the level where demand meets supply. The Commission intentionally designed the auction to account for the possibility that supply and demand might not match at the initial clearing target. It's something we planned for, and we're fully prepared to implement if the need arises.

FCC staff is now focused on forward auction bidder education and the post-auction transition. Bidder education efforts will include a user guide, an online tutorial, and a practice and mock auction to be held over the coming weeks. After the mock auction concludes, clock phase bidding will begin.

Post-auction transition planning is focused on finalizing the relocation reimbursement process and systems and developing a schedule for relocating stations that will remain on the air to assure that the transition can be completed in a timely manner.

5G – Spectrum Frontiers

Nearly three weeks ago, I circulated to my colleagues our Spectrum Frontiers Report and Order, the Commission's most significant step yet to accelerate the development and deployment of 5G wireless technology. This next generation of wireless connectivity promises quantum leaps forward in three key areas: speeds resembling fiber that are at least 10 times and maybe 100 times faster than today's 4G LTE networks; responsiveness less than one-thousandth of a second, which enables real-time communication; and network capacity multiples of what is available today.

Coupling this ultra-fast, low-latency, high-capacity connectivity with the almost unlimited processing power of the cloud will enable smart-city energy grid and water systems, immersive education and entertainment, and, most importantly, new applications yet to be imagined.

Later this week, the Commission will vote on these proposed new rules to identify and open up vast amounts of spectrum for 5G applications. If the Commission approves the

Spectrum Frontiers item, the United States will be the first country in the world to open up high-band spectrum for 5G networks and applications.

We will be repeating the proven formula that made the United States the world leader in 4G: one, make spectrum available quickly and in sufficient amounts; two, give great flexibility to companies that can use the spectrum in expansive ways; and three, stay out of the way of technological development. We will also balance the needs of various different types of uses in these bands through effective sharing mechanisms; take steps to promote competitive access to this spectrum; and encourage the development of secure networks and technologies from the beginning.

Business Data Services

To seize the opportunities to increase the deployment of mobile networks and to move towards 5G connectivity, we're going to need a lot more backhaul to handle the massive increase in data traffic. In April, the Commission launched its Business Data Services proceeding to help address this challenge. Long known as Special Access, Business Data Services offer the kind of dedicated access that wireless providers need to connect cell towers and antennae to their networks. These backhaul connections can be as much as 30 percent of the cost of operating a wireless network. Such dedicated network connections are also used by offices, retailers, banks, manufacturers, schools, hospitals, and universities to move large amounts of data.

In many areas, however, competition in the supply of Business Data Services remains limited, and that can translate into higher prices for wireless networks and then higher prices for consumers. Lack of competition doesn't just hurt the deployment of wireless networks today, it also threatens to delay the buildout of 5G networks with its demand for many, many more backhaul connections to many, many more antennae.

The Commission's technology-neutral Business Data Services proposal seeks to promote competition that that will encourage innovation and investment. This reform proposal is supported by the nation's leading wireless carriers, save one, and my goal is to conclude this proceeding no later than the end of this year.

Lifeline Modernization

One week after I last appeared before this Subcommittee, the Commission adopted an Order to modernize the Lifeline program. Lifeline was established during the Reagan administration and updated during the second Bush administration based on one simple concept: that we must provide assistance so that low-income Americans can access the dominant communication network of the day. In the Reagan era, that was the telephone network. In the Bush era, that was the cell phone network. Today that's broadband.

Accordingly, the first thing the Order does is to allow the support that the Bush administration extended to cell phone service to now be applied to broadband, whether wired or wireless, under the same kinds of conditions.

The Order also institutes good management practices that will dramatically reduce waste, fraud, and abuse. We started from a strong foundation laid by Chairman Genachowski and Chairwoman Clyburn who established a database to see if Lifeline consumers were double dipping. Correcting this flaw in the program's earlier expansion has already paid off by reducing payments by over a billion dollars to ineligible recipients who gamed the system.

Correcting another flaw, the Order ends the practice of having those who profit from Lifeline's payments determine the eligibility of participants. Instead, we're putting in place a national verifier to determine a person's Lifeline eligibility by checking against previously verified government databases.

Finally, our new Lifeline Order streamlines the requirements to become a Lifeline provider and takes a hard look at the burdens we place on those providers in order to make it easier for carriers to participate in the Lifeline program. Expanding provider participation will mean expanded consumer choice.

I am proud of the work that has been done over the years to shore up the Lifeline program and prevent future fraud. We will continue to work diligently to make sure that important safeguards are in place for this vital program.

Privacy

After months of talks with stakeholders, the Commission launched a proceeding in March to ensure consumers have the tools they need to make informed choices about how and whether their data is used and shared by their broadband providers. This proposal rests on the belief that you should have control over how your data is used and shared by your ISP.

We propose to require that broadband providers give consumers the tools they need to make smart choices about protecting their information. The proposal does not prohibit ISPs from using or sharing customer data. It simply proposes that consumers receive notice of their providers' privacy practices and give consent before ISPs use or share that data.

Last week, the window for reply comments closed, and FCC staff is diligently working through these public comments. I am confident we'll be able to arrive at final rules later this year.

Set-Top Boxes

Today, 99 percent of pay-tv consumers pay hundreds of dollars in rental fees on top of their monthly bill every year because they don't have meaningful alternatives. This February, the Commission launched a proceeding to introduce competition into the set-top box marketplace, as Congress mandated. I'm heartened to see the industry and other stakeholders want to tackle the issue with various proposals. As I've said from the beginning of this process, I'm open to all constructive feedback and proposals from all stakeholders to ensure we reach the best possible result – real competition for consumers.

I am following President Reagan's good advice, "trust, but verify." I appreciate that the industry has come to the table. Everyone can agree that consumers should be empowered to watch TV how they want, with the device, app, or interface that they choose. We need to understand more of the details of its proposal, as well as the perspectives of all of the other stakeholders. We need to ensure that consumer privacy is protected; that copyright protections and the interests of programmers are protected. We need to ensure that competition and innovation is empowered. And, of course, we need to ask, as always, whether Commission action will fulfill the Congressional mandate that you all sent to us.

LOOKING AHEAD

Next-Generation 911

During my tenure as FCC Chairman, and in my prior testimony before this Subcommittee, I have been very vocal about the urgent need to improve our 911 system. The recent tragedies in Orlando, San Bernardino, and too many other cities highlight the importance of 911 in times of crisis.

The Commission has taken action to improve the quality and accuracy of 911, and there is good news to report. We see industry is stepping up to many of the challenges, improving 911 location accuracy, supporting text-to-911, and generally investing to improve network reliability and resiliency.

But effective 911 service depends on our nation's 911 call centers. These Public Safety Answering Points, or PSAPs, must have technology to receive and process calls quickly, accurately locate callers, and dispatch an appropriate response. The unfortunate fact is that 911, designed originally for analog voice, doesn't scale effortlessly to the advanced digital, wireless, and multi-media technology landscape. In too many communities, the PSAPs are relying on dangerously out of date technology, and the transition to Next Generation 911 (NG911) – envisioned by Congress in 1999 when it established 911 as the national emergency number – has not started or is stalled. Resource-strapped local jurisdictions struggle to maintain existing 911 service, let alone to achieve Congress's NG911 vision.

Industry and many states, counties, and cities are working hard to address transition risk and achieve NG911 capabilities. Nearly 20 percent of counties now support text-to-911. Many jurisdictions are building out their Emergency Services IP Networks – the basic backbone for NG911 in their communities.

But these islands of progress are the exception, not the rule. Unless we find a way to help the nation's PSAPs overcome the funding, planning, and operational challenges they face as commercial communications networks evolve, NG911 will remain beyond reach for much of the nation. Let me be clear on this point: 911 service quality will not stay where it is today, it will degrade if we don't invest in NG911.

Congress has the unique ability to accelerate the transition to NG911. A clear national call to action, with timely application of resources, would actually lower NG911 transition costs by shortening the transition period and enabling 911 authorities to retire costly legacy facilities more quickly. Here are three ways that Congress could help:

National 911 Map: PSAPs are increasingly dependent on electronic maps for 911 routing and location, but the maps that they rely on should not end at the county or state line. Congress could authorize and fund the FCC (in collaboration with DOT) to create a national 911 map that would be available to every PSAP and would eliminate the seams between commercial communications network infrastructure and emergency response dispatch systems.

Cybersecurity Defenses for PSAPs: PSAPs face the same cyber vulnerabilities that have proven so challenging to both government and commercial organizations, but most lack trained workforce and the necessary tools for cyber defense. Congress could bring PSAP IP Networks under the protective umbrella of DHS's "Einstein" program by funding the deployment of intrusion detection sensors for NG911 networks.

National NG911 Implementation Date with Matching Funds: Currently, there is no national timetable or target date for completing the transition to NG911. Congress could establish a nationwide NG911 implementation date (e.g., to complete the transition by the end of 2020) and authorize matching funds to help state and local communities achieve this goal. Congress can further jump start this effort by ensuring that federally run PSAPs and Emergency Operations Centers make achievement of NG911 capability a funding priority.

This Committee has commendably made public safety a priority, and I urge you to do everything in your power to make sure our nation's 911 system evolves safely as it adjusts to achieve your NG911 vision and that PSAPs have the tools and support they need to avoid undue risk in the transition.

Cybersecurity

One of the most important missions of the FCC is to ensure our nation's commercial communications infrastructure supports public safety and national security. The vulnerability of advanced telecommunications networks to physical and cyber-attack is not lost upon us. We have and will continue to work closely with industry and our agency partners to identify, mitigate and where possible reduce cybersecurity risk.

Cybersecurity principles – availability, integrity, and confidentiality – are now routinely incorporated in our engagement with industry. Our advisory committees are doing important work tackling tough cybersecurity issues for current and future networks. I have additionally directed my staff to use our authority, where possible, to help ensure that cybersecurity is "baked in" to the development and deployment of 5G. Our approach is to have communication providers and their industry partners lead while the FCC brings useful assistance and transparency to ensure that this effort benefits from early peer review and serves to accelerate

development of 5G devices and services. We believe that this approach will accelerate U.S. deployment of secure, reliable, and highly functional 5G networks.

Pirate Radio

The Commission remains committed to pirate radio enforcement. Since I became Chairman, we've taken more than 300 pirate radio enforcement actions. 20 percent of the Enforcement Bureau's activities were directed to pirate radio last year, more than any other area of enforcement.

We don't just want to do more to combat pirate radio, we want to do it smarter. We have shifted from our historic "whack-a-mole" enforcement approach to focus on the worst actors – pirates that are repeat offenders that cause interference to licensed broadcasters, that run advertisements, and that operate at high power. Shortly before the last oversight hearing, all five Commissioners signed a letter addressed to local officials as well as real estate and advertiser groups whose members may provide support to pirates, whether knowingly or unknowingly. The letter and a separate Enforcement Advisory explained the very real harms caused by pirate radio and asked those groups for their assistance in addressing the problem.

As I mentioned the last time I appeared before this Subcommittee, we would welcome Congress' help in doing even more, and I know that Representative Pallone is considering legislation to make it illegal to aid or abet pirate radio operations. I welcome this dialogue and look forward to working with Congress to crack down on these criminals.

CONCLUSION

The Commission remains focused on harnessing the power of communications technology to grow our economy and enhance U.S. leadership while preserving timeless values like universal service. While there are disagreements about many of the issues I've outlined, we can all agree on the importance of the Commission's core functions that are critical to U.S. economy, businesses, and consumers. I look forward to working with members of this Subcommittee on these and other matters.

Mr. WALDEN. I thank the Chairman. Obviously, we are willing to have that discussion on 911. We also, I would remind him, did a lot on FirstNet and enhancing that and some 911 enhancements there. We know there is more to be done.

We now recognize the former Chairwoman of the Commission, the gentlelady, Ms. Clyburn. Thank you for being here, Commissioner, we look forward to your comments.

STATEMENT OF MIGNON L. CLYBURN

Ms. CLYBURN. Thank you very much. Chairman Walden, Ranking Member Eshoo, distinguished members of the subcommittee, thank you for the opportunity to once again appear before you this morning to share my priorities and vision for a more connected America.

Building on my mantra, community, community, community, in April I launched a ConnectingCommunities tour as a way to hear firsthand about the opportunities and challenges of bringing affordable, diverse, and competitive communications services to all Americans.

Last month, I traveled to the ranking member's district and met several key innovators who are using technology to drive advancements in healthcare, broadband infrastructure, connectivity, and viewpoint diversity. Next month, I will travel to Congressman Lujan's district to learn about the unique communications needs of tribal communities.

Now as I travel the country, people voice a common refrain, robust competition, affordably priced communications services, and policies that will enable innovation to flourish.

Broadband is the way that a 21st century America connects with communities. It is with this in mind that I continue to prioritize affordable broadband opportunities.

Modernizing our Lifeline Program was a momentous step in bringing affordable broadband to more Americans, but we can and must do more to make sure those economically disadvantaged are not priced out of the digital opportunity and the digital economy.

Broadband is not truly available unless it is affordable. How can we make this happen? It starts with better data and a thorough analysis of consumer broadband costs. It also means making sure that affordability is a factor in how the Commission evaluates technology transitions. And it also means moving forward on a permanent Mobility Fund to bring the benefits of affordable mobile broadband to those currently without.

Our great nation is on the cusp of ushering in the next generation of wireless broadband with the Commission's action this week to free up high-band spectrum for innovative 5G services. With an ever-increasing percentage of low-income Americans reliant on mobile broadband for online access, it is imperative that we ensure that they can reap the benefits of 5G and they are not left in the digital darkness.

But my quest to connect all communities is not limited to broadband. It is also about examining how best to promote the availability of diverse and independent sources of video programming. The Commission heard repeated concerns of independent and diverse programmers from every conceivable ideological spectrum

and followed through with the adoption of a Notice of Inquiry this past February.

I am now working with Chairman Wheeler to determine next steps, but no matter the outcome, I believe the Commission has come out of this fact-finding exercise better positioned to identify solutions that can enhance our access to independent and diverse voices.

Finally, I continue to believe that transparency should be a driving principle in the Commission's work to promote consumer choice, competition, and innovation.

It should come as no surprise that billing issues rank among the top consumer complaints at the FCC. Knowing this, I partnered with Congressman Doyle on an op-ed calling for the Nation's communications providers to lead the way by voluntarily improving transparency and disclosure of "below-the-line" fees. Enhanced transparency will ensure that when consumers sign up for service, either online or in a store, that they will not have to wait for their first bill to learn what their total monthly costs will be.

Thank you once again for allowing me to share my priorities with you this morning. And I look forward to answering any questions you may have.

[The prepared statement of Ms. Clyburn follows:]

**Testimony of Mignon L. Clyburn, Commissioner
Federal Communications Commission
Before the
U.S. House of Representatives
Committee on Energy & Commerce
Subcommittee on Communications & Technology
Oversight of the Federal Communications Commission
July 12, 2016**

Chairman Walden, Ranking Member Eshoo, distinguished Members of the Subcommittee, thank you for the opportunity to once again appear before you this morning to share my priorities and vision for a more connected America.

Nearly four months ago, in testimony before this Subcommittee, I outlined my mantra of community, community, community. Building on this theme, I launched a #ConnectingCommunities tour as a way to hear first-hand about the opportunities and challenges of bringing affordable, diverse and competitive communications services to all Americans.

Last month, I traveled to the Ranking Member's district and met several key innovators who are using technology to drive advancements in healthcare, broadband infrastructure, connectivity and viewpoint diversity. Next month I will travel to Congressman Luján's district to learn about the unique communications needs of Tribal communities.

The concept of connecting communities can take many forms. A Silicon Valley-based children's hospital and a 9-1-1 call center in Charleston, South Carolina may on

the surface appear worlds apart when in fact, they share a common thread of using technology to connect their communities. As I travel the country, people voice a common refrain for robust competition, affordably-priced communications services and policies that will enable innovation to flourish.

Broadband is the way a 21st century America connects communities, providing them the tools needed to seek employment; access government services; communicate with healthcare professionals and so much more. It is with this in mind that I continue to prioritize affordable broadband opportunities.

Modernizing our Lifeline program is a momentous step in bringing affordable broadband to more Americans, but we can and must do more to make sure those economically disadvantaged are not priced out of digital opportunity. Broadband is not truly available unless it is affordable for all Americans.

How can we make this happen? First by starting with better data and a thorough analysis of consumer broadband costs. It also means making sure that affordability is a factor in how the Commission evaluates technology transitions and moving forward on a permanent Mobility Fund to bring the benefits of affordable mobile broadband to those currently without.

Our great nation is on the cusp of ushering in the next generation of wireless broadband technologies with the Commission's consideration, in just two days, of an

order to open up over 10 gigahertz of high band spectrum for innovative 5G services. 5G has tremendous potential for connecting communities when it comes to healthcare, interconnected learning and Smart Cities. With an ever increasing percentage of low-income Americans reliant on mobile broadband for online access, it is imperative that we ensure they can reap the benefits of 5G and are not left in the digital darkness. We must ensure that we create a regulatory regime that will not only incite innovation and robust market participation, but also foster deployment of affordable next generation mobile broadband to urban and rural communities alike.

But my quest to connect all communities is not limited to broadband. It is also about examining how to best promote the availability of diverse and independent sources of video programming. Independent and diverse programmers from every conceivable ideological spectrum have told me that when it comes to offering much requested, desired and needed niche programming to the masses, they often face insurmountable challenges.

These challenges range from simply being unable to acquire carriage; to difficulties in receiving fair or reasonable contract terms; to prohibitions on growing their online distribution model because program distribution access is often restricted via contract.

The Commission heard these concerns, adopted a Notice of Inquiry in February and the response has been tremendous. More than 36,000 comments were filed in the docket, including many by individual consumers.

I am working with Chairman Wheeler to determine next steps, but no matter the outcome, I believe the Commission has come out of this fact finding exercise better positioned to identify solutions that can enhance our access to independent and diverse voices.

Finally, I continue to believe that transparency should be a driving principle in the Commission's work to promote consumer choice, competition and innovation. In practice, this means that every consumer has a right to know exactly what they will pay each month for phone, internet or pay-TV service, before they get their first month's bill.

It should come as no surprise that billing issues rank among the top consumer complaints at the FCC. For the first half of 2016, when excluding Telephone Consumer Protection Act (TCPA) related issues, nearly 30 percent of tickets filed with the agency's consumer help center related to billing. This translates to more than 27,000 complaints in just six months. Knowing of these consumer frustrations, I partnered with Congressman Doyle on an Op-Ed calling for the nation's communications providers to lead the way by voluntarily improving transparency and disclosure of "below-the-line" fees. Enhanced transparency will ensure that when consumers sign up for service, either online or in-store, they will not have to wait for their first bill to learn what their

total monthly costs will be. Consistent with this Subcommittee's bipartisan adoption of the *Small Business Broadband Deployment Act*, I believe that enhanced transparency can come about without unduly harming the nation's smallest broadband providers.

Thank you again for allowing me to share my priorities with you this morning. I look forward to answering any questions you may have.

Mr. WALDEN. Thank you very much, Ms. Clyburn. We appreciate your testimony and your work at the Commission.

We now go to Ms. Rosenworcel. Thank you for being here again. Happy birthday to you and we are glad we could celebrate it with you.

Ms. ROSENWORCEL. Thank you.

Mr. WHEELER. Please go ahead.

STATEMENT OF JESSICA ROSENWORCEL

Ms. ROSENWORCEL. Good morning, Chairman Walden and members of the subcommittee. Thank you for the opportunity to appear before you today.

This week the Commission has the future on its agenda. At our monthly meeting on Thursday, we will adopt a framework for high-band spectrum to help develop the next generation of wireless services, known as 5G. This is exciting because the future belongs to the connected. And the United States should lead.

However, I want to spend my time today not talking about the future, but instead talking a little bit about the here and now and what can be done right now to help improve our Nation's emergency number system.

Last month, I was in Dallas, a city that is still reeling from the events of last week when a peaceful protest collapsed into unthinkable violence. While in Dallas, I spent time with Betty Wafer. She is the kind of person who knows the Big D inside and out. She was born and raised in the city and over the course of 33 years has risen to the top of its public safety ranks. She now wears the uniform and is in charge of 911 Communications for the Dallas Police Department. There is not a lot she hasn't seen. Like most people who work the 911 front lines, she has a steely calm. After all, these are people who listen to us at our most troubled, and then help ensure that help is on the way.

And as we walked through the Dallas 911 center, Ms. Wafer spoke about how technology has changed during her more than three decades on the job and how it has altered the ways we reach out in times of emergency. And the numbers back her up because nationwide we now call 911 240 million times a year. And more than 70 percent of those calls are made from wireless phones rather than traditional landline phones. In other words, the bulk of our emergency calls come over a different technology than the 911 system was designed to use.

This is a problem. Because while technology has changed so much in our lives, the communications systems used by our Nation's 911 call centers have not fully kept pace. I know because I have seen this firsthand, not just in Dallas, but in the nearly two dozen 911 call centers I have visited all across the country from Alaska to Arkansas, California to Colorado, Nevada to New Jersey, Vermont to Virginia and many more places in between.

It is not that work is not being done. I mean in the last 2 years alone, with my colleagues we have been able to put in place policies to advance texting to 911. We have devised a framework to improve the ability of 911 call centers to identify the location of emergency calls made from wireless phones. And this is progress. But what can come next is even bigger.

Next-generation 911 services can support a whole new range of video and data communications. For those who call in an emergency, it will mean an opportunity to offer real-time video from an accident. It will mean the ability to provide first responders with instantaneous pictures of a fleeing suspect or emergency incident. And those are the kind of capabilities that make public safety both more effective and more responsive.

But to remake the Nation's 911 systems to fully reflect the digital age, it takes funding. And historically supporting our Nation's roughly 6,000 911 call centers has been strictly a local affair. There is no national program or annual Federal revenue source. But still, there is one thing this committee can do right now to kick start local 911 modernization.

It is this. As you know, the Middle Class Tax Relief and Job Creation Act of 2012 authorized a series of spectrum auctions at the Commission. These auctions have already raised billions. And the proceeds from these auctions are dedicated to some initiatives that get a lot of attention like FirstNet, like assisting broadcasters with relocation in the 600 megahertz band, and like deficit reduction. But there is program these spectrum auctions fund that has not get gotten the glory it deserves and that is a program for next-generation 911.

Section 6503 reinstates the joint 911 Implementation Office and authorizes a \$115 million grant program for next-generation 911. You might be familiar with it because this committee developed the program. But it has stalled and has yet to begin more than 4 years after this committee created it and after Congress authorized its creation.

So I think if you can help us you can put on the pressure because it is time to get it up and running. It is the best near-term resource we have to put next-generation 911 in place. And while these funds are limited, they can have broad impact if we use them wisely and fund next-generation 911 projects that can be a blueprint for updating services in Dallas and nationwide.

Thank you.

[The prepared statement of Ms. Rosenworcel:]

**STATEMENT OF
COMMISSIONER JESSICA ROSENWORCEL
BEFORE THE
UNITED STATES HOUSE OF REPRESENTATIVES
ENERGY AND COMMERCE COMMITTEE
SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY
“OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION”
JULY 12, 2016**

Good morning, Chairman Walden, Ranking Member Eshoo, and members of the Subcommittee. Thank you for the opportunity to appear before you today along with my colleagues at the Federal Communications Commission.

This week the Commission has the future on the agenda. At our monthly meeting on Thursday, we will adopt a framework for high-band spectrum to help develop the next generation of mobile wireless service, known as 5G. This is exciting because the future belongs to the connected—and the United States should lead.

However, I want to use my time today to talk less about the future and instead discuss what can be done right now to improve our nation’s emergency number system.

Last month I was in Dallas, a city that is reeling from the events of last week—when a peaceful protest collapsed into unthinkable violence.

While in Dallas, I spent time with Betty Wafer. She’s the kind of person who knows the Big D inside and out. She was born and raised in the city and over the course of 33 years she has

risen to the top of its public safety ranks. She now wears the uniform and is in charge of 911 Communications for the Dallas Police Department.

There is not a lot she hasn't seen. Like most people who work on the 911 front lines, she has a steely calm. After all, these are people who listen to us at our most troubled and then help ensure that help is on the way.

As we walked through the Dallas 911 center, Ms. Wafer spoke about how technology has changed during her more than three decades on the job—and has altered the ways we reach out in an emergency.

The numbers back her up. Nationwide we now call 911 240 million times a year. More than 70 percent of those calls come from wireless phones rather than traditional landline phones. In other words, the bulk of our emergency calls come over a different technology than the 911 system was designed to use.

This is a problem. Because while technology has changed so much in our lives, the communications systems used by our nation's 911 call centers have not fully kept pace. I know—because I have seen this firsthand, not just in Dallas, but in the nearly two dozen 911 call centers I have visited all across the country—from Alaska to Arkansas, Vermont to Virginia, California to Colorado, Nevada to New Jersey and many more places in between.

It's not that work is not being done. In the last two years alone, the Commission has put in place policies to facilitate texting to 911. We have devised a framework to improve the ability of 911 call centers to identify the location of emergency calls made from wireless phones.

This is progress. But what comes next is even bigger. Next generation 911 services can support a whole range of data and video communications. For those who call in an emergency, it will mean the opportunity to offer real-time video from an accident. It will mean the ability to provide first responders with instantaneous pictures of a fleeing suspect or emergency incident. These capabilities can make public safety both more effective and more responsive.

But to remake the nation's 911 systems to fully reflect the digital age takes funding. Historically supporting our nations roughly 6000 911 call centers has been a local affair. There is no national program or annual federal revenue source. But, still, there is one thing this Committee can do now to kick-start local 911 modernization.

As you undoubtedly know, the Middle Class Tax Relief and Job Creation Act of 2012 authorized a series of spectrum auctions at the Commission. These auctions have already raised billions—and the proceeds are dedicated to some initiatives that get a lot of attention, like establishing the First Responders Network Authority, assisting the relocation of broadcasters in the 600 MHz band, and reducing the deficit. But there is one program these spectrum auctions fund that has not yet gotten the glory it deserves—a program for next generation 911.

Section 6503 reinstates the joint 911 Implementation Office and authorizes a \$115 million grant program to update 911. You might be familiar with it—because this Committee developed this program. But it has stalled and has yet to begin more than four years after Congress authorized its creation.

So put on the pressure—because it is time to get it up and running. It is the best near-term resource we have to put next generation 911 in place. While these funds are limited, they can have broad impact if we use them wisely and fund next generation 911 projects that can be a blueprint for updating services in Dallas and communities nationwide.

Thank you. I will be happy to answer any questions you might have.

Mr. WALDEN. Thank you, Commissioner Rosenworcel. We appreciate you bringing that to our attention. Obviously, we get pretty frustrated when agencies and commissions don't do what they are mandated to do by statute on a timely manner. And so we are happy to follow up with that.

We will now go to Commissioner Pai. Commissioner Pai, thank you for joining us. We look forward to your testimony as well.

STATEMENT OF AJIT PAI

Mr. PAI. Thank you, sir. Chairman Walden, Ranking Member Eshoo, and members of the subcommittee, thank you for giving me the opportunity to testify this morning. Since 2012, it has been an honor to work with you on a bipartisan basis on many issues.

Kari's Law is a good example of this. Dialing 911 should always work, but it sometimes doesn't. And the reason is that many phone systems require callers to dial an access code like a 9 before the call is placed. Kari's Law would help fix this by making direct 911 calling the default on those systems.

Thanks to your work, along with the courageous efforts of Kari's father, Hank Hunt, the House of Representatives recently passed this legislation. I hope the Senate does so and that this bipartisan measure soon becomes law.

I would like to focus the rest of my testimony on two important topics: the FCC's set-top box proposal and its Lifeline Program.

First, set-top box. The breadth of opposition to the Commission's set-top box proposal signals how badly its scheme misses the mark. My friend and colleague, Commissioner Rosenworcel, rightly observed that the FCC's proposal has real flaws and we need to find another way forward.

What should that way forward look like? In my view, first, it must protect the intellectual property of content creators and safeguard minority programmers. As Jesse Jackson put it, the FCC's proposed rules would allow third-party set-top box manufacturers to "pull networks apart, ignore copyright protections, and dismantle the local and national advertising streams that have traditionally supported high quality, multi-cultural content." That is why Congresswoman Yvette Clarke and many other members of the Congressional Black Caucus have called upon the FCC to analyze the impact of these proposed rules on the diversity of programming and independent and minority television programming before pushing ahead. We should heed those voices.

Second, we must address the challenges faced by small video providers. The record makes clear that the FCC's proposed rules would have a disproportionate impact on small companies. Indeed, the American Cable Association has stated that the FCC's proposal would force over 200 small operators to go out of business or to stop offering video service. Separately, bipartisan groups of 61 Representatives, led by Congressman Kevin Cramer and 10 Senators have expressed serious concern along these lines.

Third, we must protect Americans' privacy. Senator Patrick Leahy has stressed that the "same Federal privacy protections and enforcement mechanisms that apply to proprietary set-top boxes today should apply to third-party navigation systems as well." In

other words, all consumers should have the same privacy protections. Unfortunately, the FCC's proposal fails this basic test.

And fourth, we must embrace the technology of the future instead of clinging to the hardware of the past. Americans are increasingly accessing video programming through apps. With an app, there is no need to have a set-top box or the rental fee that goes along with it. With an app, your smart phone, your tablet, or your smart television can be your navigation device.

Recently, as has been mentioned by members of the panel, stakeholders have proposed an app-based approach. My office is currently reviewing this promising proposal and I look forward to hearing what the members of this subcommittee think about it.

The next topic is Lifeline. The FCC must be vigilant in stopping abuse of the Universal Service Fund. Hard-working Americans deserve to know that the money they contribute each and every month to the fund isn't wasted or put to fraudulent use. Unfortunately, the FCC's recent investigation of Total Call Mobile suggests that American taxpayers should be worried. Although my own investigation is still ongoing, the waste, fraud, and abuse in the Lifeline Program appears greater than I had imagined.

Consider this. The National Lifeline Accountability database or NLAD, is supposed to check whether a subscriber already receives Lifeline service. But an unscrupulous wireless reseller can override that determination simply by checking a box and so wireless resellers have enrolled over 4.2 million subscribers using this override process since October of 2014. That is more than 35 percent of all subscribers enrolled in NLAD-participating States. And that is more than the population of the State of Oregon. The annual price to the taxpayer for these overrides alone is steep, about \$476 million. That is not my only concern.

Wireless resellers have overridden other Federal safeguards, enrolled actual duplicates, claimed support for phantom customers, and otherwise exploited loopholes in the program that likely resulted in hundreds of millions of dollars in USF money and taxpayer money going to wireless resellers instead of to deserving, low-income consumers. That is outrageous.

I plan to work with this committee and my colleagues to stopping this spending spree and I particularly appreciate the decision of Committee Chairman Fred Upton to investigate this kind of waste, fraud, and abuse.

Chairman Walden, Ranking Member Eshoo, members of the subcommittee, thank you once again for giving me the opportunity to testify. I look forward to answering your questions and working with you in the time to come.

[The prepared statement of Mr. Pai follows:]

**TESTIMONY OF FCC COMMISSIONER AJIT PAI
BEFORE THE SUBCOMMITTEE ON COMMUNICATIONS AND TECHNOLOGY
OF THE UNITED STATES HOUSE OF REPRESENTATIVES
COMMITTEE ON ENERGY AND COMMERCE**

“OVERSIGHT OF THE FEDERAL COMMUNICATIONS COMMISSION”

JULY 12, 2016

Chairman Walden, Ranking Member Eshoo, and Members of the Subcommittee, thank you for giving me the opportunity to testify this morning. Since 2012, it has been an honor to work with you on a wide variety of issues, from freeing up more spectrum for consumer use to encouraging the deployment of high-speed broadband.

I want to begin by expressing my gratitude to the Members of this Subcommittee for the bipartisan leadership you have shown on a number of important matters, particularly those involving public safety.

The Kari’s Law Act of 2016 is one such example. Dialing 911 should always connect someone in need with emergency personnel who can help. But this doesn’t always happen. In some hotels, offices, college dorms, and other large buildings, calls to 911 won’t go through because the multi-line telephone systems (MLTS) in use in those facilities require callers to dial a “9” before placing the call. The Kari’s Law Act of 2016 would help fix this problem by requiring MLTS systems to have a default configuration that allows direct 911 calling.

I want to thank the Subcommittee for holding a hearing on the Kari’s Law Act three months ago. I can say that your efforts, along with the courageous work of Hank Hunt, Kari’s father, and many others, are making a difference. Indeed, just one month after your hearing, this legislation passed the House. I hope the Senate moves quickly to pass the companion legislation introduced by Senators Deb Fischer, Amy Klobuchar, John Cornyn, Ted Cruz, and Brian Schatz, and that this common-sense, bipartisan public safety measure soon becomes law.

I would like to focus the rest of my testimony on two other important topics: the FCC’s set-top box proposal and the waste, fraud, and abuse that have plagued the FCC’s Lifeline program.

Set-Top Box.—I am deeply concerned about the FCC’s proposed set-top box rules. The public input submitted to the agency in recent weeks makes clear that I am not alone. During my time at the Commission, I’ve never seen such a large and diverse coalition come together with respect to any other issue. Chairman Wheeler’s proposal has united content creators and cable operators. It has brought together Democrats and Republicans, conservatives, moderates, and liberals. And it has led to civil rights organizations,¹ privacy advocates,² environmental organizations,³ and free-market proponents⁴ making common cause—all in opposition to the FCC’s proposal. The breadth and depth of opposition signal how badly the FCC’s scheme misses the mark. I cannot put it any better than Commissioner Rosenworcel did

¹ See, e.g., Letter from Brent Wilkes, National Executive Director, League of United Latin American Citizens, to the Honorable Tom Wheeler, Chairman, FCC, MB Docket No. 15–64 (Feb. 17, 2016).

² See, e.g., Electronic Privacy Information Center Comments, MB Docket No. 16–42 and CS Docket No. 97–80 (Apr. 22, 2016).

³ See, e.g., Noah Horowitz, *FCC Proposal Could Undermine Efforts to Bring Down National Set-Top Box Energy Use*, NRDC (May 04, 2016), <https://www.nrdc.org/experts/noah-horowitz/fcc-proposal-could-undermine-efforts-bring-down-national-set-top-box-energy> (last visited July 7, 2016).

⁴ See, e.g., TechFreedom and Competitive Enterprise Institute Comments, MB Docket No. 16–42 and CS Docket No. 97–80 (Apr. 22, 2016).

last month when she said that the FCC's proposal has "real flaws" and "[w]e need to find another way forward."⁵

What should that way forward look like?

First, it must protect the intellectual property of content creators. Currently, video programmers use licensing and contractual agreements with cable operators to protect and control their content. But as Senate Minority Leader Harry Reid has pointed out, under the FCC's proposal, it is "unclear what . . . duty [third-party set-top box providers] would have to protect programming content or otherwise comply with the licensing agreements" and whether "programmers would have any ability to enforce these agreements directly with the third-party providers."⁶ This, according to Senator Dianne Feinstein, raises concerns about whether "third-parties could create devices that enable piracy and hinder the ability of content providers to control their creative work."⁷ Senator Bill Nelson, the Ranking Member of the Senate Commerce Committee, has said that FCC rules should not "be the means by which third parties gain, for their own commercial advantage, the ability to alter, add to, or interfere with programming provided by content providers."⁸ But unfortunately, that's just what the FCC's proposed rules would do. They would facilitate piracy. They would allow third-party set-top box manufacturers to insert their own advertising into programmers' content. And they would allow those same manufacturers to remove advertising from that content—all without the programmers' consent.

Relatedly, we must pay special attention to the concerns that have been raised about the impact of the FCC's proposal on minority programmers. As Reverend Jesse Jackson has put it, the FCC's proposed rules would allow third-party set-top box manufacturers to "pull networks apart, ignore copyright protections and dismantle the local and national advertising streams that have traditionally supported high quality, multicultural content."⁹ He continued, "[t]he result [would be] a deep threat to the entire creative ecosystem, and especially smaller, independent and diverse networks and programmers that often lack the deep pocket resources to weather this type of transition."¹⁰ Moreover, the FCC's proposal would allow third-party set-top box manufacturers to rearrange cable operators' channel lineups, to the detriment of minority programmers. This digital redlining shouldn't be permitted.

That's why Representative Yvette Clarke of this Subcommittee and many other members of the Congressional Black Caucus have called for the FCC to stop pushing this proposal until it analyzes the "impact of the proposed rules on diversity of programming, [and] independent and minority television programming."¹¹ A similar request has been made by major civil rights organizations, including the League of United Latin American Citizens (LULAC) and the National Urban League.¹² The FCC should listen to what these voices are saying.

⁵ David Shephardson, *U.S. Cable Industry Proposes Allowing Consumers to Scrap Set-Top Boxes*, REUTERS (June 17, 2016), <http://www.reuters.com/article/us-fcc-tv-regulations-idUSKCN0Z32DK>.

⁶ Letter from Senator Harry Reid to the Honorable Tom Wheeler, Chairman, FCC (June 14, 2016).

⁷ Letter from Senator Dianne Feinstein to the Honorable Tom Wheeler, Chairman, FCC (May 25, 2016).

⁸ Letter from Senator Bill Nelson to the Honorable Tom Wheeler, Chairman, FCC (Feb. 12, 2016).

⁹ Jesse L. Jackson, *Future of TV Must Not Sacrifice Minority Media: Jesse Jackson*, USA TODAY (June 6, 2016), <http://www.usatoday.com/story/opinion/2016/06/06/fcc-set-top-box-proposal-minority-impact-opposition-media-diversity-column/853013081>.

¹⁰ *Id.*

¹¹ Letter from Representative Yvette Clarke et al. to the Honorable Tom Wheeler, Chairman, FCC (Apr. 22, 2016).

¹² See Letter from Marc H. Morial, President and CEO, National Urban League et al. to the Honorable Tom Wheeler, Chairman, FCC, MB Docket No. 16–42, CS Docket No. 97–80, and MB Docket No. 16–41 (Mar. 21, 2016).

Second, we must address the special challenges faced by small video providers. The record makes clear that it would be very expensive for all video providers to comply with the Commission's proposed rules. And as is so often the case, these rules would have a disproportionate impact on small companies. Indeed, the American Cable Association has stated that the FCC's proposed rules would force over 200 small cable operators to either go out of business or stop offering video service.¹³ And the message from small telecommunications carriers that are in the video business has been similar.¹⁴ Small wonder, then, that Capitol Hill is also concerned. A bipartisan group of 61 U.S. Congressmen, led by Representative Kevin Cramer, recently told the Commission that it is "concerned the proposal threatens the economic welfare of small pay-TV companies providing both vital communications services to rural areas and competitive alternatives to consumers in urban markets."¹⁵ This concern was reiterated by another bipartisan group of ten U.S. Senators who stressed that "[s]mall providers will not be able to afford the costs that could be associated with building new architecture to comply with the proposed rule."¹⁶

The impact of the FCC's proposed rules would thus be particularly severe for rural Americans because they are disproportionately served by smaller operators. They will be left with fewer choices for video service. Moreover, the FCC's rules will hamper rural broadband deployment as small operators devote limited funds to complying with the FCC's set-top box rules rather than delivering better, faster, and cheaper Internet access.

Third, we must protect Americans' privacy. Senate Minority Leader Harry Reid has pointed out that many third-party manufacturers will find "real value . . . not in producing or selling the [set-top] box but in the data that the box will collect."¹⁷ That is why Senator Patrick Leahy, Ranking Member of the Senate Judiciary Committee, has stressed that the "same federal privacy protections and enforcement mechanisms that apply to proprietary set-top boxes today should apply to third-party navigation systems as well."¹⁸ Unfortunately, the FCC's proposal fails this basic test. There should not be one set of privacy rules for cable operators' set-top boxes and another for third-party boxes. There should not be one enforcement mechanism for cable operators' set-top boxes and another for third-party boxes. The regulatory playing field should be level. *All* customers should have the same privacy protections.

Fourth, we must embrace the technology of the future rather than cling to the hardware of the past. I don't believe that the American people want more set-top boxes in their homes. But that's precisely what the FCC's plan would produce. To comply with the proposed rules, video providers would likely place a new gateway device into each subscriber's home to join the set-top box or boxes that are already there. Thus, the FCC's proposal would shackle us to an old technology that nobody seems to want. Echoing the sentiments of Senator Nelson, I, and millions of others, "long for the day when the clunky set-top box fades away."¹⁹

We need to focus on the future. Our goal should not be to have more boxes. Nor should it be to

¹³ *ACA Applauds Senate Letter Asking FCC to Press Pause on Set-Top Box Proceeding*, AMERICAN CABLE ASSOCIATION (May 27, 2016), <http://www.americancable.org/node/5736> (last visited July 7, 2016).

¹⁴ See generally NTCA—The Rural Broadband Association Comments, MB Docket No. 16–42 and CS Docket No. 97–80 (Apr. 22, 2016); WTA—Advocates for Rural Broadband Comments, MB Docket No. 16–42 and CS Docket No. 97–80 (Apr. 22, 2016).

¹⁵ Letter from Representative Kevin Cramer et al. to the Honorable Tom Wheeler, Chairman, FCC (May 5, 2016).

¹⁶ Letter from Senator Steve Daines et al. to the Honorable Tom Wheeler, Chairman, FCC (May 26, 2016).

¹⁷ *Supra* note 6.

¹⁸ Letter from Senator Patrick Leahy to the Honorable Tom Wheeler, Chairman, FCC (May 26, 2016).

¹⁹ *Supra* note 8.

“unlock the box.” It should be to get rid of the set-top box altogether. And that goal is now within our grasp. Americans are increasingly accessing video programming through apps. And with an app, there is no need to have a set-top box. So instead of paying a monthly fee to rent a box from a cable operator, your smartphone, tablet, or smart television can be your navigation device.

I believe that the FCC should welcome and encourage the market’s movement in the direction of apps. That’s why I thought that the Commission’s Notice of Proposed Rulemaking should have given equal and fair treatment to the app-based solution set forth by the FCC’s Downloadable Security Technology Advisory Committee, rather than dismissing it in three cursory and critical paragraphs. And that’s why I note with interest the recent industry proposal that embraces an app-based approach. My office is currently reviewing that proposal and meeting with a wide range of stakeholders to see what they think about it. I look forward to hearing the views of the Members of this Subcommittee on this alternative proposal, too.

Lifeline Abuse.—The FCC must be vigilant in stopping abuse of the Universal Service Fund. Recall that this program is funded by a tax on the phone bills that consumers pay each month. That tax is now at 17.9%, nearly double what it was in January 2009. Hard-working Americans deserve to know that the money they contribute each month to the Fund is not wasted or put to fraudulent use. So I applaud the decision of House Energy and Commerce Committee Chairman Fred Upton to launch an investigation into the waste, fraud, and abuse in the Lifeline program.

Unfortunately, the Commission’s recent investigation of Total Call Mobile revealed much about the dubious practices of many wireless resellers. We learned, for example, how Total Call Mobile’s sales agents repeatedly registered duplicate subscribers (that is, individuals receiving multiple subsidies) and used fake Social Security numbers to register duplicate subscribers—all resulting in the Universal Service Administrative Company (USAC) finding 32,498 enrolled Lifeline duplicates. We learned how Total Call Mobile’s sales agents repeatedly overrode the safeguards of the National Lifeline Accountability Database (NLAD)—abuse so far-reaching that at one point, 99.8% of Total Call Mobile’s new subscribers were a result of overrides. We also learned that Total Call Mobile was not alone. Its sales agents testified that they worked side-by-side with sales agents and supervisors who worked at various points with other Lifeline wireless resellers.

After the revelations of the Total Call Mobile case, I began investigating the effectiveness of our federal safeguards. What I have found so far is disturbing.

Some background. Duplicate subscribers have long plagued Lifeline. To combat this problem, the FCC in 2012 prohibited a single household from obtaining more than one Lifeline subscription. It also established the NLAD. Administered by the USAC at the FCC’s direction, the NLAD is designed to help carriers identify and prevent duplicate claims for Lifeline service. But is it really stopping such duplicate claims?

Although my investigation is still ongoing, initial results suggest that American taxpayers should be concerned. The extent of waste, fraud, and abuse in the program appears greater than I imagined.

First, USAC explained that the NLAD determines whether a Lifeline subscription would duplicate another at that same address. But wireless resellers may override a duplicate determination, called an independent economic household (IEH) override, and may do so without USAC oversight. An applicant (or, more likely, an unscrupulous wireless reseller) need only check a box. USAC’s data reveal that wireless resellers enrolled 4,291,647 subscribers using the IEH override process since October 2014. That’s more than 35.3% of all subscribers enrolled in NLAD-participating states during that period. That’s more than the population of the State of Oregon. And the annual price to the taxpayer is steep—about \$476 million.

Second, USAC reported that at least 16 other major Lifeline wireless resellers have used similar tactics as Total Call Mobile. I asked USAC whether these wireless resellers enrolled duplicate

subscribers, and indeed they did. Between October 2014 and May 2015, USAC discovered 213,283 duplicates among these wireless resellers. One year of service for these duplicates costs taxpayers almost \$23.7 million.

Third, USAC explained that the NLAD does not prevent wireless resellers from requesting and receiving federal subsidies for subscribers who are not enrolled in the NLAD. In other words, a wireless reseller may seek federal funds for phantom subscribers—subscribers who aren't subject to federal safeguards at all—and can get away with it unless they're caught after the fact. And in a 16-state sample, these wireless resellers exploited that loophole 460,032 times, costing taxpayers almost \$4.3 million.

Fourth, USAC explained that the NLAD verifies the identity of an applicant using a third-party identity verification (TPIV) process in which an applicant's first name, last name, date of birth, and the last four digits of his or her Social Security number are matched against official records. But wireless resellers can override that safeguard, and before February 2, 2015, they did so without any federal oversight. From October 2014 through February 2015, 10 wireless resellers overrode federal safeguards more than half the time, with seven—like Total Call Mobile—overriding the TPIV process more than 90% of the time. Roughly one-third of applicants enrolled by wireless resellers during that period, or 821,482 subscribers, were enrolled using a TPIV override.

On February 2, 2015, USAC implemented a new process for TPIV overrides. Now, a wireless reseller is supposed to review the appropriate documents for an applicant and certify to USAC that it has done so. USAC staff reviews that certification—but not the actual underlying documents—before authorizing a TPIV override. USAC's data reveal that wireless resellers enrolled 277,599 subscribers through the new TPIV process, with some wireless resellers relying on that process much more heavily than others. In all, the annual cost of subscribers enrolled through TPIV overrides approaches \$122 million.

Fifth, USAC explained that the NLAD authenticates an applicant's address with the U.S. Post Office database but that wireless resellers can override a failed address authentication without any review by USAC staff. USAC's data reveal that wireless resellers enrolled 494,921 subscribers through the address override process since October 2014, with some wireless resellers relying on that process much more heavily than others. The annual cost of subscribers enrolled through address overrides is almost \$55 million.

Putting these numbers together, wireless resellers provided service to 213,283 known duplicates, claimed support for up to 460,032 phantom customers, and enrolled 5,885,649 subscribers by overriding federal safeguards between October 2014 and April 2016. That likely resulted in hundreds of millions of Universal Service Fund money—taxpayer money—going not to deserving low-income consumers but to wireless resellers. That's outrageous. I plan to work with this Committee and my colleagues to stop this spending spree immediately.

* * *

Chairman Walden, Ranking Member Eshoo, and Members of the Subcommittee, thank you again for holding this hearing and inviting me to testify. I look forward to answering your questions, listening to your views, and continuing to work with you and your staff in the days ahead.

Mr. WALDEN. Thank you, Commissioner Pai, we appreciate your diligence and your comments this morning.

We will now go to Commissioner O'Rielly. Thanks for being with us, again for enlightening us on what your views are at the Commission and issues before the country. Please go ahead with your testimony.

STATEMENT OF MICHAEL O'RIELLY

Mr. O'RIELLY. Thank you, Mr. Chairman. Thank you for the honor to appear before you today.

Let me start my testimony on an issue raised by my colleague, the Lifeline Program. I continue to be troubled by the waste, fraud, and abuse in the program and worry that it is not on a sufficiently sound footing. In retrospect, I had urged the Commission to address these concerns before expanding Lifeline to include broadband. When it became clear that the Commission was on a different track, I recommended reforms be paired with adequate measures to safeguard the program and protect consumers that pay fees to support the fund, including establishing procedures to stop new payments to a provider if certain metrics were exceeded, a concept I have referred to as creating circuit breakers.

These ideas were ultimately rejected, in part, because the Lifeline order took the position that the reforms put in place since 2012 including the creation of a National Lifeline Accountability Database were highly effective. Sadly, that has not been the case. If more is not done to correct the situation, everyone should expect more incidents of waste, fraud, and abuse.

Turning to the debate over set-top boxes, I share the concerns that many members of this committee have expressed about the Commission's proposed technology mandate as contained in the NPRM. In my dissent to that item, I argued that the proposal could significantly impede innovation in video delivery and put at risk valuable content as well as consumer privacy without assurances that anyone would save one thin dime. I have taken the position that it would make more sense to get rid of set-top boxes altogether. A common-sense, technology-friendly replacement for set-top boxes already exists in the form of downloadable apps, which can serve as the basis for a consensus approach to the set-top box quandary. Various video providers have strengthened this argument and approach by firm commitments on timing and price.

Another issue of interest to the subcommittee is the Commission's long-awaited attempt at the required Quadrennial Review of media ownership rules. While American consumers embrace players such as MVPDs, over-the-top video players, Web sites, streaming music services, and satellite radio as part of their daily lives, broadcasters and newspapers alone are saddled with rules from a bygone era. I believe the Commission can better promote localism, competition, and diversity and be consistent with the public interest by thoughtfully removing outdated restrictions to media combinations.

It has been argued that now is a bad time to introduce any disruption in the existing media ownership regime, due to the ongoing broadcast incentive auction. However, nothing excuses the retention of all the stale rules regarding radio and newspaper industries

which will see little to no impact from the auction. Moreover, Congress was well aware of the Quadrennial Review requirements when it authorized the auction, and no special “pending auction results” or “during the auction” exemption was enacted. So the incentive auction cannot and does not let the Commission off the hook regarding its responsibilities to modify the rules in response to the marketplace conditions that actually exist today.

On another matter, the Commission seems intent on adopting broadband privacy rules this year, but if the current proposal is adopted, it will affect the consumer Internet experience and reverberate throughout the technology industry for years to come. In addition to the legal problems I have previously articulated, the Commission has not justified imposing dramatically higher burdens on one segment of the Internet economy. By most accounts, current privacy structures, including the FTC’s framework, have provided ample and appropriate protections for consumers. The FCC’s proposal, however, goes much further. Instead of creating privacy rules based on consumer expectations and the sensitivity of the data, the FCC’s proposal would require heightened consent for many consumer activities and could even prohibit certain practices that many consumers find beneficial.

The record is full of many thoughtful comments from a wide range of participants, and I can only hope that the Commission will take them into account when crafting the final rules.

Lastly, let me mention that my written testimony raises the need to consider legislation to enact fees in a spectrum-sharing environment where mutual exclusivity which is needed to trigger an auction is not obtained. I would be pleased to follow up on this topic if interest warrants.

Thank you for the opportunity to testify and I stand ready to answer any of your questions.

[The prepared statement of Mr. O’Rielly follows:]

**Statement of Michael O’Rielly, FCC Commissioner
Before the Subcommittee on Communications and Technology
House Energy and Commerce Committee
“Oversight of the Federal Communications Commission”
July 12, 2016**

Thank you for the honor to appear before you today. My thanks to the Chairman, the Ranking Member, and all the members of this Subcommittee for the opportunity to engage with you on many important issues and answer any questions you may have about the decisions and workings of the Federal Communications Commission.

The Chairman has outlined a number of issues on which the hearing is intended to focus. Accordingly, my statement below follows these issue areas. In addition, I have added a discussion on the need for authority to enact spectrum fees in particular circumstances.

Lifeline Fraud, Waste & Abuse

To start, it is not a surprise that when extensive federal money is made available, some people will take advantage and exploit the system. Accordingly, I continue to be troubled by waste, fraud, and abuse in the Lifeline program and worry that it is not on sufficiently sound footing. In retrospect, I had urged the Commission to address these concerns *before* expanding Lifeline to include broadband. Unfortunately, the goal of expansion became a greater priority than tightening its exposure points. When it became clear that the Commission was on a different track, I recommended that, at a minimum, any reforms be paired with adequate measures to safeguard the program and protect consumers that pay fees to support the fund. I suggested ten, readily achievable principles, including setting a cap or firm budget, targeting subsidies to consumers that do not have broadband service, and establishing procedures to stop new payments to a provider if certain metrics were exceeded, a concept I have referred to as creating circuit breakers.

These ideas were ultimately rejected, in part because the Lifeline Order took the position that the reforms put in place since 2012, including the creation of the National Lifeline Accountability Database, were “highly effective”. Sadly, that has not been the case, as highlighted by a number of recent enforcement actions, anecdotal evidence and the work of my colleague, Commissioner Pai. If the Commission had circuit breakers in place to detect problematic practices and stop payments pending Commission review, this might have been avoided. But it is not too late to change course and make a serious effort to remedy these ongoing issues and head off future abuses. Simply adding a new National Lifeline Eligibility Verifier, whenever that ultimately occurs, will not be sufficient to stamp out underlying problems. If more is not done to correct the situation, everyone should expect more incidences of waste, fraud and abuse.

Set-Top Boxes

I have a long history and involvement in the current debate over set-top boxes, as my prior boss, former Chairman Tom Bliley, was the author of the statutory provision governing this issue. Thus, I was present in all of the meetings and discussions leading up to the passage of the provision, and have observed the many efforts in the years since then to implement it. Moreover, within the last couple of years, I have discussed at length with all relevant industry participants the future of the set-top box industry, and more importantly, the future of technology to deliver video programming in the ever changing media marketplace.

With this background, I share the concerns that many members of this Committee have expressed about the Commission's proposed set-top box technology mandate, as contained in its NPRM. In my dissent to that item, I argued, as many have, that the proposal could significantly impede innovation in video delivery and put at risk valuable content as well as consumer privacy, without assurances that anyone would save one thin dime. If the Commission's concern is for the consumer expense of set-top boxes, I have taken the position that it would make more sense to get rid of them altogether.

A common-sense, technology-friendly replacement for set-top boxes already exists in the form of downloadable apps, which can serve as the basis for a consensus approach to the set-top box quandary. Various video providers have strengthened the argument for this approach recently with firm commitments on timing and price, and I hope that Commission leadership is giving serious consideration to an apps-based solution for video distribution. I will continue to engage on this issue in the hope of coming to an acceptable resolution.

Media Ownership

The Commission's long-awaited attempt at the required Quadrennial Review of media ownership rules brings with it the opportunity to recognize and account for the sea changes that have taken place in the American media marketplace since the rules were last effectively overhauled in 1999. Here, in 2016, social media giants are openly moving into news provider territory, Internet content is moving over-the-top into American living rooms, and personalized streaming stations accompany us on our morning drives. But while American consumers embrace players, such as MVPDs, over-the-top video providers, websites, streaming music services, and satellite radio as part of their daily lives, broadcasters and newspapers alone are saddled with rules from a bygone era. I believe the Commission can better promote localism, competition, and diversity – and be consistent with the public interest – by thoughtfully removing outdated restrictions to media combinations.

It has been argued that now is a bad time to introduce any disruption in the existing media ownership regime, due to the potential changes likely to result from the broadcast incentive auction that is currently under way. However, this argument does nothing to excuse the retention of all the stale rules regarding radio and newspapers, industries which will see little to no impact from the auction. Moreover, Congress was well aware of the Quadrennial Review requirement set out in section 202(h) when it authorized the auction, and no special "pending auction results" or "during the auction" exemption was discussed or provided at that time. Further, nothing in section 202(h) precludes the Commission from reviewing and changing or eliminating any one of its media ownership rules at any time, outside of the Quadrennial Review process, if that rule is no longer of value. So the incentive auction cannot and does not let the Commission off the hook regarding its responsibility to modify the rules in response to the marketplace conditions that actually exist today.

Unfortunately, this proceeding seems to be moving away from the goal of tailoring our rules to the reality of today's diverse, competitive media marketplace. I will continue to work with my colleagues in the hope that my concerns will be addressed.

Broadband Privacy

The Commission seems intent on adopting broadband privacy rules this year, but if the current proposal, as contained in our Notice of Proposed Rulemaking, is adopted it will affect the consumer Internet experience and reverberate throughout the technology industry for years to come. In addition to the legal problems I have previously articulated, the Commission has not justified imposing dramatically higher burdens on one segment of the Internet economy. By most accounts, current privacy structures, including the FTC's framework, have provided ample and appropriate protections for consumers. The FCC's proposal, however, goes much further. Instead of creating privacy rules based on consumer

expectations and the sensitivity of the data, the FCC's proposal would require heightened consent for many common activities and could even prohibit certain practices that many consumers find beneficial. This disconnect may be due, in part, to a misunderstanding about ISPs' abilities to access and use consumer data.

The record is full of many thoughtful comments from a wide range of participants, and I can only hope that the Commission will take them into account when crafting the final rules.

Mutual Exclusivity and Spectrum Fees in a Spectrum Sharing Environment

With all due respect to this Subcommittee, it has been my goal that, when testifying, I provide suggestions on issues that need to be addressed or may be of interest. Accordingly, let me raise, for your consideration, the issue of authorizing spectrum fees in very narrow circumstances. While I previously discussed the need to impose spectrum fees – or a cost aspect – on *federal government* spectrum license holders in order to improve spectrum efficiency, the component I hope to generate interest in today involves the imposition of fees in a spectrum sharing environment where mutual exclusivity, which is needed to trigger an auction, is not obtained. Specifically, as spectrum sharing becomes more prevalent and establishing mutual exclusivity becomes more difficult or undesired, the Commission is without a mechanism to prevent licenses from being awarded for free.

To put this into context, consider the Commission's action in our 3.5 GHz proceeding. In that item, the Commission established a process by which federal government users, licensed commercial users (who can bid on Priority Access Licenses or PALs) and unlicensed commercial users could all operate within the band with protections afforded to incumbents first and then licensees second. One problem that arose – and still exists today – was defining mutual exclusivity for PALs and determining when spectrum auctions would be imposed. Under the approach taken in the Commission's Report and Order, if only one entity seeks a PAL for a specific census tract, mutual exclusivity does not exist, no auction is held, and no PAL can be awarded. But those who see value in the protections availed to licensed spectrum will be reluctant to invest in the development and deployment of a spectrum band – and frankly may not even be able to acquire the needed capital – without the certainty provided by exclusive licenses. Recognizing the problem but unwilling to solve it completely, the Commission actually decided to give one PAL away for free only in certain rural markets.

I would argue that the Commission should seek to define mutual exclusivity in a broader sense than has been done traditionally.¹ The Commission has taken such an approach in the incentive auction, but in the 3.5 GHz proceeding such an interpretation was found to be inconsistent with our obligations under current statutory provisions. If this definitional problem cannot be resolved, in those instances where licenses are to be awarded – such as the PALs in 3.5 GHz – but there is only one applicant, then the Commission should be authorized to charge some type of spectrum fee, rather than not awarding the license or giving it away for free. That, too, would require Congressional action.

* * *

Thank you for the opportunity to testify and I stand ready to answer any questions you may have.

¹ Michael O'Rielly, Commissioner, Federal Communications Commission, Keynote Speech at "Broadband for All Seminar" in Stockholm, Sweden (June 27, 2016), http://transition.fcc.gov/Daily_Releases/Daily_Business/2016/db0627/DOC-340030A1.pdf (discussing the need to reconsider mutual exclusivity in the context of spectrum sharing).

Mr. WALDEN. Thank you, Commissioner O'Rielly, and yes, we will look forward to further discussions on that last topic you raised.

I am going to open up the questioning round. First of all, before I get started on questions, I do have a letter for the record signed by 14 law professors, economists, and experts on the operation of the Internet that details a number of very serious legal, economic, and constitutional concerns with regard to the FCC's proposed new rules for broadband privacy, some of which you have raised. Without objection, we will put that in the record.

Now some questions. I met recently with folks from the Oregon Shakespeare Festival in Oregon, the Manhattan Theater Club and others, about this issue of licensed and unlicensed wireless microphones. Apparently, the FCC set a limit of 50 or more you can get licenses. Under 50, you can't. I don't know why 50 was chosen, but I do know representing one of the best theater companies in the world, the Shakespeare Theater Festival in Ashland, they are very concerned because they don't use 50 mikes, but now they can't get licensing and they are going to have a real mess. It is going to be expensive. It is a problem. It is not the sort of thing normally rises to a hearing level. I will follow up in writing with you, but just know from what they indicated it is a serious issue that will affect them and every other. There are only a couple of theater companies apparently on Broadway maybe that are big enough to get licensed and you have got all these regional ones that will be adversely affected.

I want to go Lifeline since that has been brought up. Here, I will look forward to getting a copy of the Democrats' committee report. I was not aware of that. Have not read it. Look forward to the information and digesting it. But I am concerned, Commissioner Pai, about what you said about 4.2 million consumers somehow get signed up and override one of the safeguards against fraud and abuse.

I also know the Commission attempted to find common ground in a bipartisan way on this issue to try to get to a cap. Frankly, we were thinking the Commission was moving in a good, solid direction and I don't know what happened there. I understand there is an IG investigation, so I won't pursue it, but something went off the rails there. I am disappointed by that because we thought we were going to get the professional agency doing its professional job in that area and getting a cap that seemed to be reasonable and responsible. Very disappointed.

So talk to me about this \$4.2 million. Talk to me about the level of waste, fraud, and abuse. From what I have read in the press reports and the Democrats' position paper, they say there is no fraud, waste, or abuse increase after '08. Is that the case?

Mr. PAI. Well, thank you for the question, Mr. Chairman. My investigation is ongoing, so these results are preliminary, but thus far, I have uncovered five different species of fraud. The fraud that you asked about was what is known as an independent, economic, household verification or IEH. Essentially, enforcing the FCC's rule that not more than one person in a particular household can get a Lifeline subsidy.

Now based on the figures that I have received from the Universal Service Administrative Company, or USAC, which administers the Lifeline Program on our behalf, since October of 2014, wireless resellers have enrolled over \$4.2 million subscribers in the Lifeline Program. That is over one third of the total enrollment in the program.

The annual price to the taxpayer just for these overrides for 1 year is \$476 million. That is just one type of fraud, the type of fraud that the staff report talks about.

The other four kinds are also critical, however. Simply duplicates, essentially one person getting the same Lifeline subsidy. Just for those overrides as well, those duplicates, there are hundreds of thousands of them since between October and May of 2015, October of 2014 and May of 2015. USAC is compiling the additional analysis beyond that. Those duplicates cost \$23 million. There is a third which is phantom subscribers. Essentially, these resellers tell the NLAD we have a certain number of subscribers, but then when it actually comes to be paid, they file a different form suggesting they have a higher number of subscribers and they get paid based on that higher amount. Those phantom subscribers, as they are called, cost the taxpayers millions more.

There is also what is known as the TPIV or Third Party Independent Verification process. Those two cost \$122 million because of the override of identity vectors.

And fifth and finally, address overrides cost \$55 million. Altogether, we are talking about—

Mr. WALDEN. Why do we even have an address override capability by a vendor?

Mr. PAI. I think it is a serious problem, and that is one of the reasons why I started this investigation, is to figure out if there is a problem with this loophole, and, if there is, we need to fix it on a bipartisan basis.

Mr. WALDEN. Chairman Wheeler, moving to a topic high on your mind on 911, is there anything that prevents the States from moving forward with these enhancements in their 911 facilities? Is there any Federal prohibition on that? And second, do you think States that take money from consumers under the auspices of 911 and then spend it on non-911 related services should continue to get Federal support or is that something we should look at, saying if you are going to divert this money, you are not going to get the Federal money?

Mr. WHEELER. Thank you, Mr. Chairman. You know, almost 20 years ago I worked with Mr. Shimkus on the first national 911 bill. And one of the things that was in that bill was that the FCC should try and work with the States to do exactly what you have talked about and how can you have a Statewide program? There is resistance to Statewide programs. There are exceptions to it obviously, it is for 50 States, but there is a resistance to that in many instances.

Mr. WALDEN. But don't you think because I am going to run out of time as I have now, do you think we ought to go down a path of considering cutting off support if States are raising money under the auspices of 911—if I am a consumer in Oregon and I am paying a 911 fee, I am thinking that is going to 911 services. I will tell

you it really irritates you then to find out as a consumer no, that is just a scam.

If this was a private entity, if this was a private phone company, how long would you put up with that on the below-the-line billing practice?

Mr. WHEELER. And, unfortunately, it is not new news. It goes back again, back to 20 years it has been happening. And I agree with you. If this were commercial, this would be a fraud, deceptive advertising.

Mr. WALDEN. Deceptive advertising. And Ms. Rosenworcel, in terms of NTSA because we understand that is who has jurisdiction over what we mandated in the act a couple of years ago, happy to work with them, bring them in as well. Because as I said, you all know this first hand because you all have missed a few deadlines that are in statute in terms of reports back to us. We will push on NTSA to find out why they have not followed the statutory guidance of this Congress in their activities and appreciate the work you are doing. Unfortunately, it may be your birthday, but I am over time.

So we will go to Ms. Eshoo now.

Mr. ESHOO. Thank you, Mr. Chairman, and I would be glad to work with you on the issue of microphones in theaters.

And I think that we should really seriously examine this issue of 911, the dollars that are collected by States, and then God knows what they do with the money. They use for it for everything but what the dollars are collected for. I think there should be a nexus between the Federal dollars that are expended and sent to States in order to set up what we know we need to serve the public well and if they want to take money from people, blow it elsewhere, I don't think they should qualify for Federal funds. So I would be glad to work with you on that.

On the issue of set-top boxes, I just want to make this comment and I think that it is a very important one. Because it is a huge allegation which I don't think sticks and that is the issue of minorities and what all of that represents relative to cable.

Twenty years ago, the Telecom Act was passed. In the ensuing 20 years, out of 500 channels there are 4 African-American programmers that have programs and 2 Hispanic. So to say that the FCC's proposal that wants to unlock all of this to give opportunity and ignore what has happened under what cable—the cable industry has done, really is a head scratcher to me. I don't understand how anyone can say with the straight face that the cable industry has really made progress. So I just want to set that down.

Mr. Chairman, some of the critics of your proposed broadband privacy rules argue that any rules you adopt should apply to edge providers as well as to broadband providers. So I have two questions. Does the FCC in your view have authority to extend privacy rules to edge providers? And also, critics argue that the FCC lacks the necessary expertise to develop and enforce privacy rules.

Do you want to comment on both of those?

Mr. WHEELER. Thank you very much, Congresswoman.

Mr. ESHOO. And just briefly because I have more questions.

Mr. WHEELER. First of all, the answer is no, we do not intend to extend our reach to edge providers. And second, and I have now forgotten your second—what was your second one?

Mr. ESHOO. Does the FCC have the necessary expertise?

Mr. WHEELER. Oh, yes.

Mr. ESHOO. Because your critics are saying—

Mr. WHEELER. For decades, for decades.

Mr. ESHOO [continuing]. Give it to the FTC. We love the FTC, except there is other legislation to take just about every jurisdiction away from the FTC. So, I mean, we have got some hypocrisy here, really.

Mr. WHEELER. Congresswoman, the reality is that for decades, we have been regulating the use of network information in the telephone network saying a phone company cannot make it available to a third party without the consumers' permission. It is exactly the same kind of concept that we are talking about in broadband.

Mr. ESHOO. Good. Thank you. To Commissioner Pai, you assert that all duplicate households, subscribers, have been enrolled fraudulently. At least that is what I heard you say including those living in multi-household addresses like nursing homes, homeless shelters, veteran group homes. In what you have undertaken to examine all of this, have you examined the—what I just mentioned, these multi-household addresses? Have you included them? Excluded them? And tell me that first.

Mr. PAI. Thanks for the question, Congresswoman. So based on the information that I have collected, 4.2 million which represents 35 percent of all Lifeline—

Mr. ESHOO. I know that. You already testified to that. But I am asking you specifically in this investigation that you have taken on, have you examined multi-household addresses because they exist. They exist in my congressional district, in everyone's congressional district. And if you are using those multi-household addresses to allege that there is fraud, then you know what, you have to be really careful with this. You really have to be careful with this.

Mr. PAI. I agree completely, Congresswoman, and that is why I said we don't know if it is potentially fraudulent. We need to investigate given the magnitude of that number.

Mr. ESHOO. So you don't know, you are just saying it might be?

Mr. PAI. That is why I did the investigation to figure out what the facts are.

Mr. ESHOO. It might be.

Mr. PAI. Correct.

Mr. ESHOO. It might be. Do you have any evidence of fraud yet?

Mr. PAI. In some of the other areas, we have uncovered potential fraud, but I—

Mr. ESHOO. So there is no area that you have discovered fraud yet, is that correct?

Mr. PAI. Well, I think if you look at all of the—

Mr. ESHOO. No, just answer me yes or no.

Mr. PAI. I believe I have uncovered potential fraud. We just need to gather—

Mr. ESHOO. No. Just answer me yes or no. Have you uncovered any fraud so far? That is fair, OK?

Mr. PAI. To date, I have not reached that conclusion.

Mr. ESHOO. Not OK. Thank you very much.

Mr. WHEELER. Congresswoman, we do know the facts. I would be happy to give them for the record. There are 2.2 million Lifeline subscribers today who live in 890,000 multiple resident addresses. I have got a list here. So for instance, the Kalamazoo Gospel Mission, the Louisville Rescue Mission, the Associated Ministries of Tacoma, Rescue Mission Christian Ministry in Roanoke, et cetera, et cetera.

The total represents——

Mr. WALDEN. Conveniently located in the members of the subcommittee's districts.

Mr. WHEELER. I am sorry, what?

Mr. WALDEN. Just by happenchance members of the subcommittee.

Mr. ESHOO. We all have them in our districts. They said that.

Mr. WALDEN. I know.

Mr. WHEELER. The point being that it is about 16 percent of our total. The Census Bureau tells us that somewhere between 20 and 50 percent, depending upon your economic situation, 20 to 50 percent of American households are doubled up households, just like the ones that I read. We are at 16 percent, which is the low end.

So the answer to the question, yes, we do know what the number is. We do know the households.

Mr. WALDEN. So you are going to say there is no fraud there. Yes or no?

Mr. WHEELER. I am going to say to you, sir, that we are vigilantly working and the reason that we know——

Mr. WALDEN. Just like Commissioner Pai.

Mr. WHEELER. The reason that we know this is because we have been out making these kinds of investigations.

Mr. WALDEN. Right. We do know there was a case of fairly substantial fraud that you all have gone over after, right?

Mr. WHEELER. And the reality on that case, as is most of Commissioner Pai's so-called statistics is that he is reading from yesterday's newspaper.

Mr. WALDEN. I don't care if it is yesterday's or a month ago.

Mr. WHEELER. These were set down in 2015.

Mr. WALDEN. Right. What was the dollar amount in that?

Mr. WHEELER. \$51 million was our fine.

Mr. WALDEN. Do you think that is an insignificant number?

Mr. WHEELER. No, I am sorry, that was our fine. There were 37,000 individuals——

Mr. ESHOO. And that was the private sector ripping off the public sector, and the FCC went after them.

Mr. WALDEN. And what is what we are all talking about doing more of.

Mr. WHEELER. The root of the problem goes back to the fact that the program was designed at the outset to be one where the fox was guarding the hen house. What the original FCC proposal plan was that we have been playing Whac-a-Mole with for the last 8 years——

Mr. SHIMKUS. Mr. Chairman, I would ask for regular order and getting back to the schedule.

Mr. WHEELER. It was to how do we deal with this reality and the design was bad. It is an important program, poorly designed. And we have been playing catch-up ball, and in our recent order we put a national verifier in place.

Mr. WALDEN. I am going——

Mr. WHEELER. Which changes the game entirely.

Mr. WALDEN. And as you know, I have said publicly, you all have been cleaning it up. The notion that all of the kinks are out of the system, I think it would be hard to defend.

We will now go to——

Mr. ESHOO. I yield back.

[Laughter.]

Mr. WALDEN. We will now go to the vice chair of the full committee, Ms. Blackburn.

Mrs. BLACKBURN. And I will promptly change the topic. Chairman Wheeler, let us go to the E-rate funds. I have talked to you about the Sweetwater Consortium.

Mr. WHEELER. Yes, ma'am.

Mrs. BLACKBURN. And we brought it up at the last hearing. That is a group of 46 schools in Tennessee. They serve hundreds of thousands, a third of the school children in our State. And they have been denied \$60 million in funding for 4 years and in your response you submitted after the last hearing, you state the Consortium's appeal was filed on May 9th. It is currently pending with the Wireline Bureau. What is the status update?

Mr. WHEELER. So thank you, Congresswoman. I mean it is not unrelated to the discussion we just had because it is how do you follow the rules to make sure that waste, fraud, and abuse is mitigated? And one of the rules in the E-rate Program should be competitive bidding. And in the Sweetwater example there was no competitive bidding. Therefore, it was not in accord with the structure of the rules put in place to try to mitigate exactly the kind of thing the chairman has been talking about. That is now currently on appeal before the Bureau.

Mrs. BLACKBURN. And when do we expect a resolution?

Mr. WHEELER. I don't know the answer to that.

Mrs. BLACKBURN. OK, well, let me move on to set-top box because as I mentioned earlier, this is something of great concern and I am going to channel John Dingell for a few minutes. We just have his 90th birthday in this room, so I want all of you to think very concisely and give me a yes or a no. I know I do need the luck. Mr. Barton is right.

OK, question number one. Do you agree that the initial FCC set-top proposal is flawed?

Mr. Chairman, I will start with you. Let us go quickly down the line. The clock is ticking.

Mr. WHEELER. Everything is designed to seek improvement.

Mrs. BLACKBURN. I said yes or no. OK, OK. Ms. Clyburn?

Ms. CLYBURN. Yes or no.

Mrs. BLACKBURN. Which one do you want, pick one? You are saying both. OK.

Ms. ROSENWORCEL. I will make it easy, yes.

Mrs. BLACKBURN. OK.

Mr. PAI. Yes.

Mr. O'RIELLY. Yes.

Mrs. BLACKBURN. All right, question two, do you agree that if the FCC is to move forward, it should follow a different approach than outlined in the NPRM?

Mr. WHEELER. That is what we are trying to do right now.

Mrs. BLACKBURN. OK.

Mr. WHEELER. We are working with the industry.

Mrs. BLACKBURN. OK.

Ms. CLYBURN. Yes.

Ms. ROSENWORCEL. Yes.

Mr. O'RIELLY. Yes.

Mrs. BLACKBURN. I like this. Do you agree that the pay TV provider alternative shows some promise.

Mr. WHEELER. One page is not a proposal. It is a press release.

Mrs. BLACKBURN. Does it show promise?

Mr. WHEELER. Oh, does it show promise?

Mrs. BLACKBURN. Yes.

Mr. WHEELER. Yes, the great thing is that it lowered the temperature so we can talk together. Yes, it shows promise.

Mrs. BLACKBURN. OK.

Ms. CLYBURN. Yes.

Ms. ROSENWORCEL. Needs work, but yes.

Mr. PAI. Yes.

Mr. O'RIELLY. Yes.

Mrs. BLACKBURN. You all are doing really well on this. OK, I met with the Copyright Office yesterday and they have got some concerns about this proposal. So do you agree that no matter what the FCC does, it must not diminish copyright law, jeopardize the security of content, or undermine the license and advertising models that finance programming in the first place?

Mr. WHEELER. Copyright protection and the protection of contracts which exceed the authority of the Copyright Office are essential and must be an essential part.

Mrs. BLACKBURN. So I take that as a yes.

Mr. WHEELER. They must be an essential part.

Ms. CLYBURN. Copyright security and privacy must be in place.

Ms. ROSENWORCEL. Yes.

Mr. PAI. Yes.

Mr. O'RIELLY. Yes.

Mrs. BLACKBURN. OK, would you agree that the original set-top box proposal effectively renders content worthless?

Mr. WHEELER. No.

Ms. CLYBURN. No.

Ms. ROSENWORCEL. My office has met with the Copyright Office and I know that the Copyright Office has expressed concern about just what you describe, so I think that more work is necessary on our part.

Mrs. BLACKBURN. Commissioner Pai?

Mr. PAI. Yes, I agree with Commission Rosenworcel.

Mrs. BLACKBURN. OK.

Mr. O'RIELLY. Yes.

Mrs. BLACKBURN. OK, thank you all for that. You have left me 30 seconds to wrap up so I am grateful for that.

I will tell you this. Meeting with content producers and the independents that are there in Tennessee, individuals that have the ability and have been creating a lot of cable TV programming, things of this nature, what they find and Mr. Chairman, going back to what you said, if this original proposal, the set-top box proposal got out there, they would be paid for the first round, but basically, the ability to go in and to negotiate those licenses is something they feel would be stripped from them. And they think not only does it have domestic, it also has international implications because of the ability to hack in and grab that digital file and then to utilize it.

I think that you have got a long way to go on set-top boxes and I am pleased to hear that you are willing to work on that. I yield back.

Mr. WALDEN. Thank you. The gentlelady yields back. The chair recognizes for a point of personal privilege, the gentlelady from California.

Mr. ESHOO. Thank you, Mr. Chairman. I meant to do this at the beginning of the hearing. Former chairman of our full committee is with us today in the hearing room and I want to acknowledge his presence, former congressman and chairman of the full Energy and Commerce Committee, Billy Tauzin. Welcome.

[Applause.]

Mr. WALDEN. Thank you. The gentlelady yields back. The chair now recognizes the gentleman, the ranking member of the full committee, the gentleman from New Jersey for 5 minutes.

Mr. PALLONE. Thank you, Mr. Chairman. It is good to see Chairman Tauzin here as well.

Chairman Wheeler, I am trying to get your commitment to three things, so I am trying to move quickly here to cover all three.

The first is about the set-top box. I have seen encouraging reports from the press that you have been negotiating with stakeholders on a compromise proposal in the set-top box proceeding. I urge you to work swiftly toward a resolution that will benefit consumers. For me, that resolution must include adequate protections for content. Consumers will not care how their TVs work if they can no longer get their favorite content.

So my question, can you commit to me that before you vote on final rules that you will work with the Copyright Office as well as other copyright experts inside and outside the Government to make sure your plan will not run afoul of intellectual property laws?

Mr. WHEELER. I can go beyond that, Mr. Pallone, to say we will work with the copyright holders as well because the Copyright Office has only a limited area of jurisdiction and there are a lot of issues such as contracts and things like this that are important to the copyright holders.

Mr. PALLONE. Thank you, Mr. Chairman. Next is about the Lifeline Program. You heard during my opening statement today that Democratic committee staff issued an interim report concluding that evidence does not support Republican allegations of \$500 million of waste, fraud, and abuse in the FCC's Lifeline Program. And the report also includes several recommendations for the FCC. And these recommendations include first having the FCC periodically review the Lifeline Program data for new trends; second, pre-

venting the use of fraudulent snap cards as verification for Lifeline subscribers; third, making sure the independent economic household worksheet is not being abused; and lastly, studying whether safeguards that have been implemented in some States can improve the program at a national level.

And again, it may be difficult to say yes outright, but I just would like you, if possible, to follow these recommendations to help prevent fraud from the Lifeline Program, if you could comment on that.

Mr. WHEELER. Thank you, Congressman. I haven't seen the report.

Mr. PALLONE. I know you haven't.

Mr. WHEELER. Those sound like very logical recommendations that ought to be pursued.

Mr. PALLONE. All right, thanks again. We are going quickly here. And then lastly, on the SANDy Act, a few months ago, I was proud to announce that the Nation's wireless carriers were committing to voluntarily comply with the wireless portions of my bill called the SANDy Act. And I wanted to thank you for working with me to make sure that the carriers are making the networks more accessible during emergencies. But because this wireless resiliency agreement is just voluntary, ongoing oversight is critical. So with that in mind, could you update us on the implementation of the wireless network resiliency cooperative framework and how the FCC is making sure that carriers live up to their commitments?

You have 2 minutes left, so take your time.

Mr. WHEELER. Thank you, Congressman. The industry has done an excellent job after your leadership pushing this issue. And industry should be commended for stepping up like this. As you say, our job in this environment now is to be the watchdog, to check on the process.

The first step in this activity had to do with the upcoming hurricane season. And what is the industry doing to prepare for something that we know is coming and has been the source of so many difficulties in your district and elsewhere up and down the East Coast in particular.

And so the industry has been working on that, and later this month—I can't give you the specific date, but it is in the next couple of weeks—our Public Safety Bureau, who has responsibility for us, is sitting down with the industry to review the things that they have put in place and to make sure that indeed that is stepping up to the commitment that they made to you and to us as a result of your leadership on this issue.

Mr. PALLONE. All right. Thank you so much. I appreciate it. And I yield back, Mr. Chairman.

Mr. LATTA [presiding]. Thank you very much. The gentleman yields back and the chair now recognizes for 5 minutes the gentleman from Texas the chairman emeritus of the full committee.

Mr. BARTON. Thank you, Mr. Chairman. And we have given Chairman Tauzin the big head. He is out there grinning like a Cheshire Cat as he got introduced by Anna. We will have to make sure we put him back in his place and find out who is clients are and see if we can't do him some harm or something.

[Laughter.]

Mr. WHEELER. Mr. Barton, could I just make one observation? Looking at that picture up there and the chairman sitting here in the audience. One is a lot younger than the other.

Mr. BARTON. Actually, he looks pretty good.

Mr. WHEELER. But I would not want to make that observation about another portrait.

Mr. BARTON. Exactly.

Mr. WHEELER. Because that would be wrong.

Mr. BARTON. I look nothing like that.

[Laughter.]

Mr. BARTON. It is probably why Chairman Upton hadn't put his portrait up yet. Anyway, it is good to see Billy.

I am going to have to do something I almost never do and that is in a hearing like this bring up a constituent issue, but it is the only way I know to maybe get some action.

Mansfield Independence School District is one of the best public school districts in my congressional district. It is a community of about 80,000 in the suburbs of Dallas-Fort worth. Several years ago, they got \$1 million from the Universal Service Administrative Company to do some Internet access for their low-income classrooms. They received \$1 million over three funding cycles.

They applied for another \$820,000. That application was denied and at the same time USAC said oh, by the way, that \$1 million we have already given you, you have got to give it back. They have been trying for the last 2 years to resolve this issue without success. My district office has sent several letters to try to help resolve the issue without success. Their last appeal was cursorily denied without any explanation.

So Mr. Chairman, I am asking you if you would ask your staff to do something unusual which was to take a personal look at this and see if we can't resolve it. I don't personally have a problem that their request for additional funding was denied. I understand how tight those funds are. But I have got a real problem if they agreed to fund it. They gave them the \$1 million over three cycles and then asked for it back. Can you look into that?

Mr. WHEELER. Yes, sir, Mr. Barton.

Mr. BARTON. OK, I appreciate that. Now my policy question, I am the co-chairman of the Privacy Caucus and I am way back when one of the people that helped put into place what we now call Caller ID. Under the proposed rulemaking have to—instead of certain information being automatically included and then you can opt out of that information being used, you are going to go to an opt-in procedure where consumers have to opt-in to certain information. If you do that, in all probability, a lot of consumers will not opt-in. And if they don't, you make it almost impossible for Caller ID, as we know it today, to be utilized.

Can you all, all the Commission take a look at that? I know we are trying to protect privacy, but my premise is if somebody is calling me, I should have the right to know who is calling me and I make the decision whether I take that phone call. That means that you have to have the phone number and in most cases some sort of a personal identifier, Congressman Billy Tauzin is calling Joe Barton or vice versa. If you don't have that basic information, you

really don't give people that are receiving the call the opportunity to decide whether they want to take the call.

Mr. WHEELER. Thank you, Mr. Barton. I think you raise a very good point. What our privacy rules are directed at, that is poor English, what we are trying to get to in the privacy rules is the broadband area. You are talking about a telephony item. We are talking about how you have some consistency back and forth between the two, but we are not trying to rewrite what is going on in the telephony world. But I will definitely—it is on board, sir.

Mr. BARTON. I appreciate the Commission, all the other Commissioners, taking a look at that.

I yield back, Mr. Chairman.

Mr. LATTA. Thank you. The gentleman yields back and the Chair now recognizes for 5 minutes the gentleman from Pennsylvania.

Mr. DOYLE. Thank you, Mr. Chairman. Chairman Wheeler, I want to thank you for your leadership on business data services or special access. I think I have really been working on it 8 years. It just feels like a decade. This issue has been pending before the Commission too long and I appreciate your leadership on it. But I just want to give you a minute to just tell us why completing the proceeding is so important and what is online for the American consumer?

Mr. WHEELER. Well, you know, it is really interesting, Congressman. Back in the day when I was president of CTIA, I remember being at board meetings and the wireless carriers coming in and saying 30 percent of my operating cost is what I am paying for backhaul because I am dealing with an area that has been totally unregulated and can't you do something about that?

And then the principal providers of this backhaul services, also wireless carriers, would raise their hand and say, "Uh, no, we can't go there, we can't go there." So this has been an issue that I have been dealing with for probably as long as you have been dealing with as well.

The reason I tell that story is because wired infrastructure is essential for wireless. And it will become even more essential in 5G because 5G is a multiple of much smaller cells that all have to be connected.

And so what we are talking about here, yes, we are talking about competitive services, but yes, we are also talking about if we are going to have this national priority and we are going to be the world leaders in 5G, you have got to be able to connect it and you have got to be able to connect them at reasonable rates. That is why this is an important proceeding.

Mr. DOYLE. Thank you. Commissioner Clyburn, as you had noted, the two of us wrote a joint op-ed on below the lines fees. We have seen these fees skyrocket across the telecommunication marketplace in recent years and we know what they cost consumers. Tell me, what tools does the FCC have to address the proliferation of this practice?

Ms. CLYBURN. I was pleased to bring this to the attention of those who already know it. One of the things I am pleased about with the attention that we got with the op-ed is the fact that our advisory committee is actually taking this up, is moving ahead be-

cause surprises again—that is the type of surprise that you do not want when you sign up for services.

So when you talk about people, especially with individuals who are on fixed income, it is really important what they sign up for, the financial expectations they have are realized and as I said, I am pleased to let you know that we are going to follow up with this to ensure that the information flow that is at the type of transparency needed for this will get more attention and more traction in the days to come.

Mr. DOYLE. Thank you. Commissioner Wheeler, I want to go back and talk a little bit about zero rating and the fear that a lot of us have that this has the potential to have some anti-competitive effects on the marketplace.

Studies have shown that users overwhelmingly prefer apps and services that are zero rated and I believe that if these services aren't properly policed, it could have the same effect as paid privatization or anti-competitive interconnection and a range of other behaviors that are restricted in the Open Internet Order.

So what steps is the Commission taking to examine these offerings and ensure that they are not harming consumers?

Mr. WHEELER. Thanks, Congressman. You know, we took a long and hard look at the zero rating question during the Open Internet proceeding and decided that a case-by-case approach was better than a broad-brush approach. The question really boils down to what is the impact on consumers? What is the impact on competition? And what is the impact on innovation?

And if you can have positive checkmarks in that, but it is zero rating, then you shouldn't catch it in some kind of blanket. But you also want to have the ability to go through and say no, that is not pro-consumer, that is not pro-competition, that is not pro-innovation.

So what we have been doing is gathering information about the various zero rating items that are out there, as well as various proposals, to try and be able to put together the kind of analysis that helps you answer that kind of question and that is what we are in the process of doing right now.

Mr. DOYLE. Thank you. And I would just close by saying with regards to Lifeline, is there no fraud in the program? Of course, we know there is no fraud. Is the fraud as prolific as Commissioner Pai suggests? We know that is not true either.

The danger with the kind of information, Commissioner Pai, that you stated is that somehow the potential for fraud somehow gets translated in the newspapers as actual fraud and the public believes that this number is this big and we know the number isn't zero. It is somewhere in between this big and zero. And I just think we all need to be responsible when we throw out numbers that we don't lead taxpayers to believe that there is this massive type of fraud going on. And I would end by saying that the fraud is being committed by companies, not the poor, and I think that should be emphasized, too. Thank you, I yield back.

Mr. LATTI. The gentleman's time has expired. And the Chair now recognizes himself for 5 minutes. First, if I could ask you, Commissioner Pai, and then follow up with you, Commissioner O'Rielly, two of the FCC's major rulemakings this year seem to be

at odds with each other. On the one hand, the FCC has proposed rules with very prescriptive broadband privacy regulations and on the other hand, consumers' privacy and viewing data is left completely exposed in a highly controversial set-top box proceeding.

Has the majority of staff of the Commission ever discussed this with you?

Mr. PAI. No, Congressman.

Mr. O'RIELLY. The contradiction between the act—no.

Mr. LATTA. So that is a no. OK. Thank you. Commissioner O'Rielly, let me go on. I have been very active with the Internet of things here in committee with some other members and what will the spectrum frontiers order in the development of the 5G mean for the Internet of things?

Mr. O'RIELLY. So if the chairman alluded to what activity we are going to take, I want to be careful on getting too much into this, but the opportunities of what it can bring and the connectivity for expanding the universe to the Internet of things, the billions and billions of devices and applications that will be made available, be connected with our high-band spectrum is going to be monumental for decades to come, assuming that we get our rules right.

Mr. LATTA. Even what you said at the very end, what I have been hearing during these discussions, you just said the words "if we get our rules right." What I have been hearing from everyone that we have been having in is that the one thing that they worry about is on the legislative and the regulatory side making sure that they pretty much all of a sudden might be shut down from getting these things done out there.

And so when you say getting them done right, how would you foresee in the future of getting things done right at the Commission?

Mr. O'RIELLY. Well, I am in negotiations with the chairman and his team to try and finesse some of the points that are in the item. I like the general direction of where it is going, but we have to make sure that the licensing structure to make sure that the bands are available in a way that carriers are apt to use them. We want to make sure that it coincides with what the applications and the industry and the manufacturing world plan to use them as well. So we are trying to finesse some of those finer points.

Mr. LATTA. Thank you very much. Commissioner Pai, with my remaining time, one of my concerns of the FCC's set-top box proposal is the disproportionate impact it would have on small companies. The costs to comply could result taking funds away from other initiatives and services that benefit consumers.

As someone that represents—and you have been out to my district and thank you very much. My district goes from very, very rural to urban. This is a great concern of mine because small, paid TV companies typically provide communications services to the rural areas. As the Commission considers alternative approaches to their proposal, how are you seeking to balance the cost and benefits for the small operators and their customers?

Mr. PAI. That is a great question, Congressman. It was a privilege to have met with the small cable companies and other small video providers in your district and around the country. The concern they generally express about the FCC is that the burden of

regulations falls disproportionately on them since they don't have the scale to comply. I think in the set-top box proceeding that the concern has been brought home by the fact that 61 Representatives, 10 Senators have expressed bipartisan concern that this cost and benefit analysis has not been done generally, and it especially has not been done with respect to small businesses. And so that is a concern I take very seriously and I hope the Commission does as well.

Mr. LATTA. Well, thank you very much and I am going to yield back the balance of my time and recognize the gentleman from Vermont who also co-chaired the Rural Caucus here on the Energy and Commerce Committee for 5 minutes.

Mr. WELCH. Thank you very much, Mr. Chairman. I welcome the FCC Commissioners. We really appreciate the work that you do. First, I just note that the DC Court of Appeals supported in its entirety the net neutrality rule. That was very debated and very contentious, but it is resolved legally, at least at that stage. And I hope that that means that we will be able to focus on some of the other efforts that require some bipartisan cooperation like the homework gap in like the deployment of 5G.

I want to ask some questions about three areas, the homework gap, the special access, and 5G. And I will start with the homework gap.

Commissioner Rosenworcel, thank you for your aggressive leadership on this. It really makes a difference in Vermont and a lot of our rural areas. Actually, urban areas as well. About 70 percent of teachers, as you know, according to the FCC's statistics, assign homework that requires Internet access, but only about 33 percent of households are really able to take advantage of that.

Representative McKinley and I have a bill that I think can help a bit on this. And I am going to be introducing another bill on that as well, that would require the FCC to issue new rules that would ensure providers of mobile broadband Internet that participate in the Lifeline Program to offer subscribers mobile devices that are Wi-Fi capable. Do you have a view on this bill and how it could help the homework gap?

Ms. ROSENWORCEL. Well, thank you, Congressman Welch, and I appreciate your leadership on this subject, too, with the Digital Learning Equity Act. As you mentioned, seven in ten teachers assign homework that requires Internet access and one in three households does not have access. And where that overlaps is a homework gap and it is the cruelest part of the digital divide. Anything we can do to help fill that gap is going to help students and the tethering you describe is ideal and could be really useful.

Mr. WELCH. Thank you. And Chairman Wheeler, I want to ask you a little bit of follow up on what Congressman Doyle asked you about special access. This is going to be a big deal, obviously, for all of America, but we are going to have a challenge in rural America as well with the cost of infrastructure being what it is.

Can we have some assurance that the rules that will be promulgated will take into account the extraordinary challenges that have existed in rural America about having access to the infrastructure that is essential for it to have the Internet?

Mr. WHEELER. Thank you, Mr. Welch. Yes, and as you know, the programs that we have for addressing that issue in rural America are extensive, and we should not be coming out with a rule that unfairly targets. There is the reality that there needs to be a competitive environment, and you have to be dealing with how do you incentivize that competition.

Mr. WELCH. Thank you. And Mr. Pai, I will ask you, too. On 5G, again, it is sort of similar to what I was just talking to Chairman Wheeler about. It is a different infrastructure. You are not going to have as many of the pipes and wires, but there continue to be challenges in rural America. And at the very beginning of establishing rules that are going to be absolutely essential to the build out of 5G, there has to be integrated into it the challenges in rural, hilly America, whether it is Appalachia with Mr. McKinley or rural Vermont for me.

And can you comment on what steps can be taken in order to treat rural America as the first-class citizen?

Mr. PAI. Thanks for the question, Congressman. I take this seriously, both as a Commissioner and also as a rural American myself, having grown up in a small town in Kansas. I think increasingly what we are seeing is a digital divide where people in the bigger cities can take as granted that they will have fiber and other advantaged technologies that allow them to have high-speed connectivity.

In rural areas, like ours, it might be a copper line that has faded over time. And how do we promote the deployment of fiber in rural areas where you can't necessarily have a business case? That is the \$64,000 question.

We have part to play in that with our Universal Service Fund, and so I pushed, for example, for a support for stand-alone broadband to make sure that that fiber was available. I think it is also the IP transition is critical for us to give the private sector the maximum incentive to connect every American, rural Americans, tribal Americans, and others with that fiber and I think additionally, we always need to be forward thinking. If there are other regulations that some of the smaller competitors tell us about that are standing in the way, we need to have an open mind.

I have met with some small providers, in some cases one and two-man shops, who have told us look, your rules in this case or that case are holding us back. We are not a big company, help us out. I think that could go a long way.

Mr. WELCH. Thank you. I yield back. Thank you, all.

Mr. LANCE [presiding]. Thank you very much. The chair recognizes Mr. Shimkus.

Mr. SHIMKUS. Thank you, Mr. Chairman. Welcome, Commissioners, it is great to see you all.

Sometimes we quibble too much. I am getting a little frustrated today. We are picking at each other for things that there is a lot of agreement. I think there are people we know, we need a Universal Service Fund. The question is how it is going to be properly deployed. Should it go into broadband now? Do we need to clean up the abuse in Lifeline? The answer is yes. We all know that. So these levels, again, I get frustrated.

I think the set-top box thing that was raised, I think you raised a question, opened it up. I think there has been response and I think there is a consensus growing that we should move to an app-driven world.

I think the last time we met, I think people use that now, and I hope that we just get some of these what are perceived to be very contentious issues away from us so we can address other things.

911, as was mentioned, we did pass a mandate on grants, prohibition on grants if the States were stealing 911 dollars. We could do that.

So there are more things that unite us than divide us. That is all I am going to say.

But I do want to address, this might be your last time here. I mean, the chairman said maybe not. It could be. I have been really focusing on what is the FCC for the future. And I ascribe to a lot of the debate that it is a time for a rewrite of the Telecommunications Act for a lot of reasons. If you pull up the Web site we have a Consumer and Government Affairs Bureau. We have an Enforcement Bureau, an International Bureau, Media Bureau, Public Safety and Homeland Security, Wireless and Telecommunication, Line Competition, those are bureaus. Under the bureaus like the Wireline Competition Bureau we have a bureau chief, three deputy chiefs, one chief of staff, a data officer, economist, three associates bureau chiefs one program manager of the USF, two—I mean you have got an army over there.

So the first question is, and it is great to have Chairman Tauzin here because in the telecom rewrite which I wasn't a member yet, but I have been here 20 years, what was the Wireline Competition Bureau, what was it designed to do after the rewrite of the '96 Act, Chairman Wheeler?

Mr. WHEELER. Thank you, Mr. Shimkus. As you all sit here, I would like to identify myself with your remarks about how—yes, we do—it is interesting. But 91 percent of our decisions are unanimous.

The Wireline Competition Bureau was created after the Act, because the Act required several specific actions by the Commission to make decisions—

Mr. SHIMKUS. OK, fast forward today. What does it do today?

Mr. WHEELER. It oversees activities in the wireline world. So for instance, what we are dealing with on Thursday which is the move from analog to IP and what are the expectations there when service is discontinued is something that comes out of the Wireline Bureau.

Mr. SHIMKUS. My point is I think that when we had part of the questions and answers, you talked about telephony and broadband. They are merged. We have a lot of stuff, a lot of telephony goes over broadband and we still have some stovepipe administration programs and procedures.

Mr. WHEELER. They are merging. And yes, we have—

Mr. SHIMKUS. Well, there is a nexus and definitely the nexus isn't in the way they were designed. I would challenge you to start looking at the FCC 2.0 or 3.0 or the future because we are just—we are not there.

On the Web site, the wireless—just simple things. When you look at the organizational charts, you are not standard. Everybody has got their own little, how they portray their organizational structure. There is like two that have different formats. Three that are the same. And the Wireless Competition Web site comes up page not found.

Mr. WHEELER. I am sorry, what?

Mr. SHIMKUS. Page not found.

Mr. WHEELER. It does?

Mr. SHIMKUS. Yes. Just for your information.

Mr. WHEELER. Thank you.

Mr. SHIMKUS. So I would really hope and my time is running out. Chairman Wheeler, you have kind of pushed, and I will ask Commissioner O'Rielly to weigh in, too, because he has mentioned this, that there is a reason that you have procedures in place and that they are working, but you also form multiple task forces to look at FCC processes.

Can you comment on what you found out and then Commissioner O'Rielly can you respond to these task forces?

Mr. WHEELER. So we have been working through a process. Your time has run out.

Mr. SHIMKUS. This would be the first time that you have ever said time has run out.

[Laughter]

Mr. SHIMKUS. I wonder why that is.

Mr. WHEELER. You said this may be my last chance, Mr. Shimkus, so I don't want to miss that. But Commissioner O'Rielly earlier this week had an excellent blog on process reform in which he identified 24 specific issues. So I will let Commissioner O'Rielly respond to that.

Mr. O'RIELLY. I appreciate the chairman's kind words. The difficulty has been that on process reform the task force that we set up was intended to look at some of the ideas that I had already previously talked about and the offices all assigned somebody and they have gone round and round and round for months on end and we have gotten absolutely nowhere. So that is why I put up the bar to kind of show where we are at the moment. We are nowhere.

The chairman says that a lot of these are good ideas, but we can't get any of them to move forward and these are not the biggest ticket items. The biggest ticket item I know he doesn't agree with. He said he would do it over his dead body and I was willing to take him at his word.

[laughter]

But that being said, there are things that can make our organization work better and we will have improved collegiality.

Mr. SHIMKUS. And I would just, reclaiming my time, and I know I am—I would just hope that in our last cycle here, we start talking about how we can make it all work better and move forward, not backwards. And I yield back my time.

Mr. LANCE. Thank you and for the first time as chair, time has run out. Ms. Clarke, you are recognized.

Ms. CLARKE. Thank you so much, Mr. Chairman, and I thank our ranking member.

Chairman Wheeler, it appears that some progress is being made on the set-top box issue and I want to applaud your efforts to solicit and consider alternate proposals from industry. However, I believe that for the Commission to continue down this path, based upon the telecom law of 20 years ago with regard to the technology hardware that is set-top box is quickly becoming obsolete. It is, in fact, a fool's errand. I hope that this debate, however, has been useful in unearthing the complexity and layers of issues that intersect and so profoundly impact on consumers and the industry that are impacted by creating this new ecosystem.

I hope that the rulemaking will be done in a way that we can look to a 21st century model. And as you know, the GAO has approved my request for an impact study. Clearly, my preference would be that no action is taken prior to the GAO study, following your own advice to trust and verify.

However, if there remains an insistence on moving ahead, I would like to have your assurances that you will work with me to ensure that the findings of the proposal's impact on multi-cultural media will be integrated into any file rulemaking.

Mr. WHEELER. Thank you, Ms. Clarke. You and I have talked about this repeatedly and you know that I do feel strongly about the importance of making sure that the Commission step up its role to make sure that we do create opportunity to multi-cultural media.

Ms. CLARKE. Absolutely, but my question was——

Mr. WHEELER. Would I work with you? Yes, ma'am.

Ms. CLARKE. And when the GAO study findings come out that we will review them together and see how they can be incorporated into a final rule.

Mr. WHEELER. And I hope that what we are doing is in the process right now building a record.

Ms. CLARKE. I hope so, too. But I am talking about the GAO study. I am very specific about what I am looking at.

Mr. WHEELER. Yes.

Ms. CLARKE. OK, very well. Thank you. On June 27th, you circulated a fact sheet describing an item provided in response to the Third Circuit's remand in the wake of the Prometheus decision. Five minority ownership proposals suggested by MMTC were excluded, including the extension of the MVPD procurement rule to all communications platforms, a rule introduced in advance by my colleague, Congressman Rush.

Would you be willing to commit to the extension of this rule across all platforms recognizing industry convergence? I think this is one of the things that has become self-evident through this process.

Mr. WHEELER. There is a real challenge that we face under the Supreme Court's strict scrutiny standard.

Ms. CLARKE. I am clear on that.

Mr. WHEELER. And the ability to get through that standard becomes a threshold to all of this. If there is a way that you think that that could be done, I am interested.

Ms. CLARKE. Let us talk about that. Chairman Lance, I would like unanimous consent to submit a letter for the record signed by myself, Congressman Rush, and Congressman Butterfield to Chair-

man Wheeler requesting the extension of the MVPD procurement rule to all FCC-regulated entities.

Mr. LANCE. Without objection.

Ms. CLARKE. Thank you. Finally, Mr. Chairman, you have noted that the media and telecom ecosystems are converging rapidly. Leading the way in this convergence is advertising whose messages cut across media platforms from AM radio to wireless apps to everything in between.

When the FCC banned discrimination in ad placement in 2008, the agency recognized how critical advertising is in facilitating the diversity of voices and ownership. Under the current statutory authority, it appears that the Commission can ask the industries it regulates for information on the use of minority-owned advertising agencies and their current status with minority-owned media ad placement.

Would you be willing to make such an information request of both the agencies you regulate and edge providers to provide the results to members of this subcommittee within 90 days of today's hearing?

Mr. WHEELER. Thank you, Congresswoman. I am not familiar with the specifics, so a blanket yes ma'am, but I would like to learn more and see what can be done.

Ms. CLARKE. Very well. Chairman Wheeler, I will also be submitting to the record follow-up questions regarding the Commission's movement on secondary market transactions for minority owners. Having said that, Mr. Chairman, thank you.

Mr. LANCE. Thank you very much, Congresswoman. I will recognize myself for 5 minutes.

I am pleased to see that we are discussing 5G technology. Just yesterday, Verizon Wireless in the district I serve in Basking Ridge, New Jersey, announced that it had completed its 5G radio specification, the first U.S. carrier to do so and I look forward to working with all of the members of the Commission and the members of this committee on this issue.

For Commissioner Pai, with all of the convergence going on in the communications industry and the Internet ecosystem, policy makers strive to make laws and regulations that are technology neutral so as not to disadvantage one company over another in the marketplace because competition among firms on a level playing field is, in my judgment, beneficial to all consumers.

If the FCC applies a certain set of rules to ISPs that differ significantly from the rules that apply to other participants in the Internet ecosystem, would that be considered technology neutral?

Mr. PAI. Congressman, I do not believe it would be considered technology neutral.

Mr. LANCE. And do you believe that this is a possibility moving forward?

Mr. PAI. It is not only a possibility, the FCC itself recognized that in paragraph 130 of the privacy NPRM.

Mr. LANCE. Thank you. Commissioner O'Rielly, would you like to comment on that, please?

Mr. O'RIELLY. I agree, I don't believe it is technology neutral and I think that is the path we are headed for.

Mr. LANCE. Thank you. For Commissioner Pai as well, and also Commissioner O'Rielly, one of the foremost concerns of consumers today are Caller ID spoofing calls and I have worked on this issue, scammers using IP-based technology to spoof the phone number, the name and pose as a legitimate financial institution or law enforcement agency to scam consumers and Congressman Barton raised this as well.

It is my understanding that there is an effort underway among service providers and third parties with directory listing information to develop a protocol to verify the Caller ID information before sending the call to consumers. This protocol relies on the sharing of data. Under the FCC's proposal if we move to an opt-in consent regimen, there are concerns that this effort could be undermined. Would you please comment, Commissioner Pai?

Mr. PAI. Thanks for your question, Congressman. I think this highlights part of the problem. One of the unintended consequences of the FCC's intended approach by diverging from what the Federal Trade Commission previously had done apply more of a consumer-based approach, the FCC has highly prescriptive regulations that would single out certain players in the echo system for disparate regulation. I think one of the harms could be to consumers in that regard. And that is part of the reason why the FTC staff itself recently commented to the FCC that this two track privacy scheme that is in development is something that is not going to benefit consumers in the long run.

Mr. LANCE. Commissioner O'Rielly?

Mr. O'RIELLY. I would agree. I think the unintended consequence that you highlighted gets to the point of the rush to judgment. We are trying to move this expeditiously to finish by the end of this term, the end of this year. This is a very sensitive topic. It is a very complicated topic and it should be done on a timeline such as that.

Mr. LANCE. Thank you. There are constituents of mine as well as just about everyone here on the dais and we have petitions pending at the FCC. However, we know that in some cases petitioners can wait years before having a resolution. Former Chairman Emeritus Barton discussed this. This is also true of constituents of mine.

What more can be done to clear pending petitions so individuals and businesses who have business before the FCC can have certainty as to what is occurring?

Commissioner Pai?

Mr. PAI. Thanks for the question, Congressman. My very first speech as a Commissioner, I targeted this as an area of good Government reform. I think the public expects and deserves to be given an answer. Tell me yes, tell me no, but just tell me something.

One thing we can do that I teed up 4 years ago was apply Section 7 more vigorously which requires the FCC to rule on applications for new products and services within a year. It is essentially a dead letter for many years at the FCC. We should impose more deadlines on ourself and I think we should also impose more sunset clauses so that regulations don't persist well past their due date. They have to be revisited every now and then. And those are the kinds of things on a bipartisan basis that would ensure that every

member of the American public gets an answer that is responsive and that matches marketplace reality.

Mr. LANCE. Mr. O'Rielly?

Mr. O'RIELLY. I would agree with my colleague's comments. I would also say that in the legislation that this committee has addressed, it would require us to set deadlines on a number of things in the petitions. We can move that without—we can do that ourselves. It would be helpful to have legislation. I am supportive of that, but we can do that notwithstanding and I would like to see us do so.

Mr. LANCE. Thank you very much. I yield back the balance of my time and I recognize Congresswoman DeGette.

Ms. DEGETTE. Thank you, Mr. Chairman. I just want to clarify a couple of things that we have been talking about this morning. The first one is this set-top box proposal and the alternatives that have been proposed. One of my big concerns as the co-chair of the Privacy Caucus with Mr. Barton is protecting consumer privacy.

And so Chairman Wheeler, I just wanted to ask you irrespective of what path the set-top box final rules goes, does the FCC plan to retain enforcement authority over any violations of Section 631 and 338?

Mr. WHEELER. Yes, ma'am.

Ms. DEGETTE. Thanks. The second area I wanted to talk about very briefly is this lingering discussion of waste, fraud, and abuse in Lifeline. Always I hear—I have been in Congress now for a while I always hear people criticize waste, fraud, and abuse. This is certainly something we can agree on on a bipartisan basis. Nobody wants to see waste, fraud, and abuse. We are opposed on a bipartisan basis to waste, fraud, and abuse. I think it is important to get that on the record and so when I hear people like Commissioner Pai talk about waste, fraud, and abuse in the system, I take that seriously, and I think that we should all talk about this investigation and these findings and is it true and what are we going to do about it?

And so Chairman Wheeler, I thought I might give you the opportunity to talk about some of the actions that the FCC has taken either during or before your tenure to combat fraud, waste, and abuse, and is this an issue that you take seriously moving forward?

Mr. WHEELER. Thank you very much, Congresswoman, and yes, it is hard to understate the seriousness of something like this for two reasons. One, as has been pointed out, this is the people's money.

Ms. DEGETTE. Right.

Mr. WHEELER. But two, if waste, fraud, and abuse is being used to compromise the ability of individuals who deserve to have connectivity and to threaten the program, then it is worse, even worse.

We are existing in an environment where technology is moving ahead and people are falling behind. We must be vigilant. What we have been doing, as I said before, is playing Whac-a-Mole on this, that there was a design for the program that said we will let the fox guard the henhouse, that we are going to count on self-certification from those who get the money to say yes, this is a real person, yes, this is a good address, et cetera. That is the way the pro-

gram was designed at the outset and we spent the last 8 years playing Whac-a-Mole trying to beat those down as new attacks on that pop up.

Ms. DEGETTE. So that is great. I am glad you recognize, as I do that this is a problem. Can you give me some concrete examples about what the Commission is doing and also maybe respond a little bit to what Commissioner Pai said in about 30 seconds?

Mr. WHEELER. As Commissioner Pai said we just had a \$51 million judgment against a company called Total Call Mobile which was engaged in virulent fraud. We have actually shut them down so that they are not getting any funds going forward now.

Because this is a law enforcement issue, I can't give you specifics other than to say that both the Enforcement Bureau using civil means and the Inspector General of the Commission working with the Justice Department and the FBI for criminal prosecution are moving forward and have identified over a dozen specific instances where you need to be going after.

Ms. DEGETTE. Thanks, and if you could please supplement your testimony today to tell me what processes the Commission is putting into place within its network to prevent fraud, waste, and abuse?

And Commissioner Rosenworcel, since it is your birthday, I just have to ask you one question. How do you think that the expansion of broadband to the Lifeline Program will help close the homework gap that you talked about in your testimony?

Ms. ROSENWORCEL. Thank you. If you don't have access to modern communications today, you don't have a fair shot at prosperity in the 21st century. And that is especially true for school children. Pencil and paper doesn't cut it any more. So what we can do with Lifeline could make a big difference for students by giving them the connectivity they need to simply do their homework.

Ms. DEGETTE. Thank you. Thank you very much, Mr. Chairman.

Mr. LANCE. Thank you very much. The chair recognizes Mr. Scalise.

Mr. SCALISE. Thank you, Mr. Chairman. I first wish you Happy Birthday, Commissioner Rosenworcel. I promise not to ruin it by singing to you. I couldn't imagine where else you would rather be than on your birthday than here.

I really appreciate all the Commissioners coming to talk to us about a number of things that we are interested in that I think people across the country are interested in in relation to the decisions that the FCC is considering in making.

I do want to applaud Congressman Shimkus' comment that it is long past time to consider rewrite of the '96 Telecommunications Act. I have been talking about this for a long time. I would be remiss if I didn't bring up the fact that this was the mobile telecommunications device, the last time our laws were written. And today, when we do so many new and innovative things on this device, we are still governed by the laws that were available when this device was the main smart phone. And we do need to change those laws.

As we consider some of those changes, I have also been critical of the '92 Cable Act and the need to update that. I think at the time they were really good laws that some of the people that wrote

those laws are here in this room and they were very valid and modern when they were written, but it is our responsibility to go and identify those areas where we need to modernize.

And I have also been very careful to point out that as we are modernizing those laws, we need to respect copyright law. The basic idea that somebody that created content ought to be compensated for the negotiations that occur and how that content is best distributed. And that brings me to the latest proposal that the FCC is considering dealing with set-top boxes.

And I would be remiss if I didn't bring more modern technology, and so when you look at this set-top box which is actually being used today in the marketplace, I would hope that we don't look at it under the prism that we have got to figure out a way to make this device the main source of content distribution for consumers and again, I will go to the more modern device that I use. I can literally stream and am streaming ESPN right here on this app on my smart phone. I will be in person when LSU plays Wisconsin and the Speaker and I are going to have a difference of opinion when the Tigers beat the Badgers in Lambeau Field, but if you are not there, you could actually watch the game live on this device. And so it is incredible how much innovation has occurred in the marketplace. And a lot of it is through the app-based world. And I would hope that we don't force the one size fits all as we are looking at the different approaches.

I do want to ask you, Chairman Wheeler, the Motion Picture Association of America had submitted a comment, as many have, on the set-top box. In their reply, they had sent you a comment and said, "Our ask is straight forward. That in seeking to ensure set-top box competition, the FCC not give third parties our content without our permission and without compensation, not put our content at risk of theft, and not threaten the economics underpinning the creation of programming that is fostering a second Golden Age of Television."

So what I want to ask you is have you started looking closer maybe at different alternatives including app-based technologies as opposed to just looking at different ways to distribute through this archaic device, as the industry is looking at different innovations that are even more convenient for consumers like this.

If you could share that with me and I would like to ask some of the other Commissioners as well.

Mr. WHEELER. Thank you, Congressman. Yes, the answer to your question is yes. I loved your show and tell here.

Mr. SCALISE. All of this will be in a museum. This is actually a lot more valuable than when I bought it a few years ago.

Mr. WHEELER. And it is even beyond this. I mean I just read that Pokémon is back on an app, of all things. So that is how rampant the changes are. But let me be specific to your question.

The set-top boxes are not going away. I learned an interesting thing the other day in Business Week, an article about Comcast, that they are delivering 40,000 set-top boxes a day. And this of their X1, their latest whiz-bang. So set-top boxes are not going away.

Mr. SCALISE. And I have seen some great innovations——

Mr. WHEELER. And these apps are important.

Mr. SCALISE. And these companies compete against each other, and I don't want us to be interfering with their competition.

Mr. WHEELER. And apps are very important, and one of the concerns that we are trying to learn in the proposal that NCTA put forward, for instance, is that there are those who are suggesting that the way in which they are structuring their apps' proposal actually requires a new gateway for every television. That is a second box. This committee has told us a lot about how much you don't like second boxes.

So we are trying to work our way through this. I am encouraged that we will be able to get through it. I have lived through all of those evolutions up there, and I know that we will—none of them were easy, and we will continue to work through it, but we are going to be in serious discussions as to how do we make sure that we have a solution that follows the statute and offers consumers choice both in hardware and software.

Mr. SCALISE. And I know I am out of time. I wanted to ask Commissioner Pai about privacy. I will submit that for the record, just on expectation of privacy, and you have been pretty vocal about that in the past.

Mr. PAI. Well, thanks, Congressman. I personally embrace the twin goals that the White House set forth in the 2012 Privacy Report that consumers should have a uniform expectation of privacy and that there should be a level playing field with respect to all providers in the Internet ecosystem. And those are the twin goals that I will carry forward in this proceeding.

Unfortunately, the FCC's proposal right now singles out Internet service providers for disparate regulation despite the fact that they are nascent players in the online advertising market and that is part of the reason why we have seen, for example, around the administration's first FTC chair, Jon Leibowitz, suggests that this type of disparate regulation would not be good for consumers in the long run.

Mr. SCALISE. Yes, different standards. I appreciate it, Mr. Chairman. I yield back.

Mr. LANCE. Thank you very much. The Chair recognizes Congresswoman Matsui.

Ms. MATSUI. Thank you, Mr. Chairman. I want to thank the Commission for appearing before us again. It is great to see you.

Mr. Chairman, I know you all, all of you, appreciate the need for greater access to spectrum to fuel our wireless economy. The FCC has done a lot of important work in this area. The incentive auction, as you say, is under way and I was encouraged to see the FCC identify an ambitious clearing target, so congratulations.

There is ongoing work to identify Government spectrum for commercial use. I appreciate the FCC started a proceeding on the 1675 to 1680 megahertz which Representative Guthrie and I wrote to you about along with many of our colleagues. I look forward to continuing to work with you to bring that spectrum to auction.

And later this week, the Commission is voting on the spectrum frontiers proposal to open up high-frequency bands for 5G, the next generation of wireless broadband. This is all progress and there is more to do if we want the United States to continue to lead the global wireless economy.

Chairman Wheeler, as I said, this is all progress. Can you elaborate on our broader strategy to ensure that the United States will continue to lead the world in 5G and I have additional questions for you, too.

Mr. WHEELER. Thank you, Congresswoman. I will be really brief then. What we hopefully are going to do on Thursday is to become the first nation in the world to identify high-band spectrum for 5G. And that, coupled with what we have already done in low-band and what we have already done in mid-band, puts this country, its manufacturers, its entrepreneurs and innovators, it gives them a home-field advantage. And that, I truly believe, and I was saying to one of my colleagues yesterday, the decision we make Thursday could actually be the most important decision this Commission makes this year.

Ms. MATSUI. That is great. Chairman Wheeler, as you know, I am very interested in how we improve spectrum efficiency and spur innovation so that we can maximize the benefits of this finite resource. We often talked about this in the context of mobile phones and wireless carriers. But innovation is important for all spectrum uses including over-the-air broadcasting. I know that a coalition including public broadcasters and consumer electronics manufacturers have submitted a proposal for next-generation TV standard which could allow broadcasters to innovate within their existing spectrum. I understand the FCC has sought comment on that proposal.

Mr. Chairman, what are the next steps as the FCC considers this proposal, and will you take further action this fall?

Mr. WHEELER. Thank you, Congresswoman. I don't know exactly where we are on being able to commit to it this fall kind of agenda. The record has just closed on this. We are in the process of working our way through it. Then, of course, we will be meeting serially and ad nauseam with all of the players to try and collect the basic information to be able to have an informed decision going forward.

Ms. MATSUI. Thank you very much. And let me just say that I really want to comment on Lifeline. I am very passionate about it and I know other Commissioners are passionate about it. I just really feel that this is so important for not only connectivity, but the fact of the matter is that there are so many people in our country who are unserved and under served in both rural and urban areas.

In order to bring us to a point where economically we could really be competitive, we need to make sure that everyone participates. So I encourage all of you to proceed further because I think this is an area where we really need to ensure that we make a lot of progress. And I do thank you for everything you are doing and I yield back. Thank you.

Mr. LANCE. All right. Thank you. We will be adjourning. We have a vote and we will be back. The Chair has announced that we are in adjournment. Thank you.

[Recess.]

Mr. LANCE. The committee will reconvene, ladies and gentlemen. The Chair recognizes Mr. Kinzinger of Illinois.

Mr. KINZINGER. Thank you, Mr. Chairman. Thank you all for being here and bearing with us on the votes and schedule.

Mr. Chairman, I have a very rural district that is served by a number of companies that specializes in providing services such as power distribution into areas with unique infrastructure needs. In my district, there is about 50,000 people served by rural electrical co-ops who provide safe and reliable services on a continuous basis. The issue of those co-ops have brought forward to your Commission and into my office is the timely distribution of information when you have service-related outages, interruptions, maintenance issues, things like that, and how that could—anything that basically could negatively affect the consumer.

As I am sure you are aware, I am talking about the TCPA regulations that were first introduced two decades ago before the advent of majority of the technology we use today was invented.

Are you aware of the petition filed by Edison Electric Institute and the AGA requesting expedited action by your agency by a utility-specific exemption from parts of TCPA regulations?

Mr. WHEELER. Yes, sir.

Mr. KINZINGER. Have you met with representatives of the industry to hear their concerns, who are my constituents, their views on the importance of service-related text messages, phone calls, that they want to receive regarding outages, maintenances, and other issues?

Mr. WHEELER. I haven't met with them directly, sir. My staff has.

Mr. KINZINGER. OK. Do you have any plans for responding to the petition or a time frame?

Mr. WHEELER. I put a proposal on the floor in December.

Mr. KINZINGER. OK. Do you have any idea on timing beyond the staff?

Mr. WHEELER. It is up to them.

Mr. KINZINGER. Do you have more to add?

Mr. WHEELER. Commissioner Rosenworcel is now telling me it was adopted.

Mr. KINZINGER. OK, great. Commissioner O'Rielly, could the FCC have set up an enforcement regime modeled after the FTC's enforcement regime? And is there any way that the two agencies could have worked out an enforcement regime that took better advantage of the FTC's expertise?

Mr. O'RIELLY. I think you are getting into the issue of privacy. I think there was an opportunity and still is an opportunity to work in cooperation with the FTC. I think the path that we are headed down though would not allow that. Hopefully, we will change course. I am not too optimistic at the current time.

Mr. KINZINGER. Can you talk just a little about I guess about the benefits of their expertise and—

Mr. O'RIELLY. So the FTC has been working on privacy 15-plus years. I worked on it when I was a staff member here and oversaw. They built an extensive backhaul of material. They have hundreds of people working on the issue.

Compare that to the FCC, we have maybe 15 people working on it. And our experience is this narrow in terms of what the scope is and also how long we have been working on it. So I would argue that we should adapt and adopt a lot of the approach from the FTC. They have a different statute that governs their operations

than us. It is an enforcement model structure, but they have been able to get to a place that provides, I believe, and I think most people that operate in the space, privacy protections for consumers and ensures that the privacy is treated fairly without jeopardizing the Internet and the Internet experience.

Mr. KINZINGER. It would seem to make sense to learn from what other agencies have done as we implement it. Let me ask you another question, different subject. This committee spent a great of time considering infrastructure issues. As we move towards 5G, infrastructure becomes both more important and more complicated with networks running on many, many small cells instead of the more traditional macro towers.

Can you tell us what the Commission is doing to enable the infrastructure deployment, and particularly, can you give us a status update on this proceeding regarding distributed antenna systems?

Mr. O'RIELLY. Sure, the Chairman may be better to answer your last part as to the status. I only have so much say in the activities of the Bureau, but I have been pushing the agency to move a number of items that would allow greater infrastructure buildout. There is going to be more need for buildout. People are talking of it being ten times the number in terms of macro cells compared to the small cells, so to try and build that infrastructure, it is going to be smaller, but you are going to need more of them. You are going to need to get backhaul to them. You are going to need to get power to those sites and that is a very difficult universe.

We have a number of localities who believe in federalism, but we have a number of localities that have been problematic in terms of allowing infrastructure builds. We have been trying to build best case scenarios, but we also have worst case scenarios and we are trying to use the authority that we have that Congress has granted us to push those localities to allow greater infrastructure because in the same breath that we will hear from a mayor that my citizens want broadband. At the same time they will say but we don't want you to build. It is a push-pull. And so we are obligated to try and make available Internet access and broadband.

Mr. KINZINGER. Sounds like politics. With that I will respect the time and yield back. Thank you.

Mr. LANCE. Thank you very much. The Chair recognizes Mr. McNerney of California.

Mr. MCNERNEY. I thank the chairman. I want to thank the Commission for your hard work. I mean this is interesting, but it is complicated and sometimes controversial, so I appreciate your work on this.

I am glad to hear that the chairman of the subcommittee and the ranking member are interested in the wireless microphone licensing issue and I offer to work with anyone on that.

Chairman Wheeler, regarding set-top boxes, one of the goals outlined in an FCC fact sheet about your initial proposal was better prices for customers. This goal is especially important for customers in my district which has high unemployment and high poverty rates. Are better prices for consumers still a priority considering the apps-based approach?

Mr. WHEELER. Thank you very much, Congressman. You know, set-top box forced rentals because you really have no choice, have

been going up at about 5 percent a year every year like clockwork. And so yes, it is a very serious concern. And one of the reasons why I believe the Congress mandated that we have a competitive—we assure that there is a competitive set-top box, or navigation device which is what the language uses, was for that very reason because competition has the effect of having an impact on lowering prices.

Mr. MCNERNEY. It should any way.

Mr. WHEELER. It should.

Mr. MCNERNEY. Commissioner Clyburn, do you believe that the adoption of the apps-based approach could in any way disadvantage low-income consumers?

Ms. CLYBURN. I believe that the direction in which we are headed and the proposed regime and the outcome that all of that envisions should bring overall net benefits to all in terms of a more openness, more competition, adherence to Section 629.

And again, we are keeping in mind all of the privacy, security, and other protocols that is without question as a baseline, but what we want is more options. What we want is more affordability. What we want is more competition and more people having access and I think that is the direction in which we are headed.

Mr. MCNERNEY. Well, I hate to ask a procedural question, but going to apps-based approach, is there going to be another new Notice of Proposed Rulemaking?

Mr. WHEELER. I think the notice that we put out is broad enough at this point in time to be able to justify it because we asked for what are other approaches to the whole.

And certainly there is a record developing on this, sir, so you can't say that there wasn't a record.

Mr. MCNERNEY. Moving on to Lifeline, I would like to thank Mr. Pai for acknowledging the difference between potential widespread fraud and widespread providers. I encourage you to keep that distinction in mind as we move forward.

Mr. Wheeler, the Lifeline Program is a critical resource in my district. More than 56,000 households participate. How would capping the budget for Lifeline Program impact the Lifeline recipients?

Mr. WHEELER. Thank you, Congressman. What it does is it disincentizes the offering of service because if you look at—you need to be able to say to someone who is going to provide service you can count on \$9.25 a month because you have got to amortize equipment, you have to worry about all of the expenses associated with this and you can count on that kind of a cash flow.

If you say well, it is \$9.25 today, but tomorrow, could be \$6, then you create an economic disincentive to be offering the service. So what we tried to put in place was a budget that said OK, when you get to 90 percent of this number, then it is time for the Commission to come back and revisit what is going on. How do you put a mechanism in there? We don't want things just go whacko here, but how do you put a mechanism in first control while creating incentive at the same time?

Mr. MCNERNEY. Moving on to the 911 technology issue, how do you see the FCC gaining the authority that you feel you need to move forward with adapting the new technology?

Mr. WHEELER. I think this committee is in charge of that question, sir, with all due respect.

Mr. MCNERNEY. OK. Good. I have 18 seconds, so Mr. Wheeler, I am interested in the privacy issue as well. If the Commission allows paper privacy practice in moving forward with this rule-making, how will it ensure that the costs of in-cent of Internet service is not inflated so that consumers are forced to accept the discount in order to use that to keep their information from being—

Mr. WHEELER. Thank you, Congressman. Excellent question. So I think that everybody agrees that privacy isn't a luxury. You can kind of start there. And as your question indicates, this is a very complex issue, and so we specifically called it out in our rule-making and said can we please have everybody's thoughts on what the best way is to do it. I haven't got an answer for you yet, but we are searching for it.

Mr. MCNERNEY. Thank you, Mr. Chairman.

Mr. LANCE. Thank you very much. The Chair recognizes Mr. Bilirakis of Florida.

Mr. BILIRAKIS. Thank you, Mr. Chairman. I appreciate it very much and I want to thank the panel for their testimony today. Welcome.

Like many of my colleagues on both sides of the aisle, I think it is imperative for you to listen to the chorus of concerns for your set-top box NPRM and embrace the apps-based approach that won't shackle the industry to a hardware-dependent model moving forward.

My constituents and I are also concerned about the likelihood of confusion that will grow exponentially with your new ISP privacy proposals under our Title II. It does not make a lot of sense to me to regulate Internet service providers under one new set of untested rules and allow everyone else to continue under the successful FTC privacy standard.

My constituents want to be sure that their important information is security protected online at all times. The best way to ensure this is to consistently apply uniform standards to all of their information so they don't have to worry that their information can be treated differently depending on who they are providing it to.

This recent trend towards differentiating between types of companies that can potentially compete against one another in the free market is a troubling regulatory development in my opinion. I want to follow up on a matter that we have discussed in the past few meetings regarding the FCC field offices, Mr. Chairman.

I along with many of my colleagues from both sides of the aisle were concerned about the impact of losing the fields' boot on the ground presence, especially with regard to resolving interference to public safety communications. You have consistently stated the FCC will continue to meet its speed of disposal metric for public safety interference. The FCC will respond to 99 percent within one day and that response is typically an email to the complaint, so I don't really consider that a response.

However, you have since disclosed that it takes 28 days, I understand, on average to resolve the interference to end it. In one sentence or less, Chairman Wheeler, has that data point changed since you closed the field offices?

Mr. WHEELER. I can't answer that with specificity, sir, but the need to get out and deal with what are the realities in each inter-

ference situation, for instance, one of the major interferers is ballast in neon bulbs. So I remember a situation where our inspectors go and knock on a beauty shop door and they have no idea what is going on. How do you find it in here? It becomes an ongoing extensive process to get through it, but I can't—I'll try to find what the answer is to your question, but I don't know it off the top of my head.

Mr. BILIRAKIS. Please get that to us as soon as possible. Again, members from both sides of the aisle are interested in this, our constituents come first.

So moving on, Commissioner Pai and O'Rielly, a European commentary recently asserted that rather than move towards the type of harmonization our privacy rules achieved in Europe, the FCC's proposal and I quote "seems to be instead moving towards fragmentation and more prescriptive rules for Internet service providers versus other Internet companies including some of the largest users of personal data."

She indicated that "from European eyes, it appears strange to see the U.S. normally a leader on digital issues taking this apparently retrograde step."

Now that the privacy shield agreement was formally approved earlier today, what does it mean for Europe to have harmonized privacy standards and transatlantic reliance on the FTC model whereas domestically the FCC rules could lead to fragmentation of our privacy regime? Whoever wants to take it first.

Mr. PAI. Congressman, thanks for the question. Those concerns are shared domestically included by myself and I think part of the reason why the privacy shield was notable was that it is backed up by Federal Trade Commission enforcement and the U.S. Commerce Department represented to the European Union that FTC enforcement was an adequate way to ensure that at least domestically those privacy protections would be upheld.

Unfortunately, I think what the FCC has done according to the FTC's own staff comments it is carved out for special and more onerous regulation Internet service providers and so as you pointed out in your question we now have a two-track regime. Ironically, the new competitors in the online advertising market apparently will face more onerous regulation than everybody else who will face FTC regulation. And I think that is something that ultimately will redound to consumers' detriment.

Mr. BILIRAKIS. Commissioner O'Rielly?

Mr. O'RIELLY. I would agree with my colleague's comment. I hate to admit it, but it looks like Europe is taking a more thoughtful approach than the United States on this issue.

Mr. BILIRAKIS. Thank you. Commissioner Pai—oh, I know there is not much—can I have 30 seconds?

Mr. LANCE. Certainly.

Mr. BILIRAKIS. Thank you very much, Mr. Chairman, I appreciate it.

Commissioner Pai, what is so unique about the Lifeline aspect of the Universal Service Program where a basic fiscal responsibility measure like a firm budget cap is still not applied to a program with such a storied history by some, not all, of the participants in the Lifeline Program?

Mr. PAI. Thanks for the question, Congressman. I think the Lifeline Program like all of the Universal Service Programs are focused on one thing, supplying digital opportunities to Americans who otherwise might not have them. And that is part of the reason why I think it is so important for the FCC to be a wise fiscal steward of all of the dollars that taxpayers put into that fund.

Part of the reason why I supported a budget is that it was the only one of the four Universal Service Fund programs that wasn't budgeted. I think it tends to promote more wise and careful spending to make sure that those dollars go to the people in need, and I think that is something that all of us can agree on.

Mr. BILIRAKIS. Definitely. Thank you very much. I appreciate it. I yield back, Mr. Chairman.

Mr. LANCE. Thank you very much. The Chair recognizes Mr. Yarmouth of Kentucky.

Mr. YARMUTH. Thank you very much, Mr. Chairman, and I very much appreciate this hearing. I am not sure I could have gone another 2 months without an FCC fix.

[Laughter]

And I would also like to agree with Mr. Shimkus and Mr. Scalise about, I think, the desirability of rewriting the act, although I might suggest that it is going to be a lot harder given the pace of change in this field, it is going to be a lot harder than it was in '96 and certainly a lot harder than '34.

I know you have all heard me say before, we are talking about the pace of change that innovation is requiring companies to make investments to support user demand. Just last weekend in my district it was reported that AT&T has finally built out their fiber footprint and it is great. It is great for my constituents and I know it has been said many times in this hearing already how important this is for the country and I commend the Commission on its work in expanding broadband so everyone can participate in the economy.

That being said, the way we receive content from broadcasters, radio, and newspapers is changing rapidly and I remember when I was growing up we had two television stations in Louisville, two radio stations that reported news, and two newspapers that were owned by the same company that owned one of the television stations and one of the radio stations, so I really understood the—I would have understood the need for cross ownership regulation at that point. But now in today's world and I come from a media background. I owned a newspaper. My son now owns a newspaper, which he is also doing broadcasting. Every broadcaster is doing print media. They are not doing it in newsprint. But they are doing it online.

Pew Research said 62 percent of Americans now get their news from social media. I saw a Nielsen report a couple of weeks ago. Among Millennials, only 24 percent watched any television last year, and I actually validated that with a group. I was with 30 Yale students. I said how many of you watch television this year. Everybody raised their hand. I said how many of you watched the television set? Two raised their hand.

So as I think of all this, I am wondering and I read the fact sheet, the update on the Commission's plans on cross ownership

rules. And I know Mr. O’Rielly, you have been outspoken about your opinion that we don’t need it, we don’t need them. I noticed in that update it says that the rule will reinforce the idea that is necessary in the public interest. So I am kind of curious, in the 2 minutes and 20 seconds I have left, let you take a shot first for a minute as to why you don’t think they are necessary anymore, and then I would like to have somebody who believes, can explain to me where the public interest benefits from.

Mr. O’RIELLY. So I haven’t said to eliminate. There are five rules, with different parts to each one. So I haven’t said to eliminate them in total. There are definitely paths that I want to see us recognize that we should modernize. You highlight the experience of newspapers. The newspaper industry is in a very troubled state, but we are going to maintain—you will see soon enough our activity on our media ownership rules. I think you are going to find it is even stronger than what is on the fact sheet. It is actually in a more prescriptive and additional route requirements. So I think that is in the wrong direction.

But based on where the media is today, where Millennials are taking their information, where consumers are taking their information, where news is being provided, so one of the arguments that I made and this is a point in my testimony is that we can’t do anything on television because we have the incentive auction going, but that has no impact on the newspaper/radio side, and we make the point that those markets are not the same and they are not competing against each other in the item, so it is hard to me to fathom that we can’t at least do some reform over here, but we are not planning to do so. So we are going to lock in the rules for another 4 years or longer, and it hasn’t changed since 2004.

I think that is very problematic given what has changed in that time frame for users’ experience, for consumers’ experience, and for producers’ experience. And I just think that we have to thoughtfully change our rules, modernize them while still respecting localism, competition, diversity, and the public interest. We can do both. We are not doing it in this item.

Mr. YARMUTH. Mr. Chairman, do you want to take a shot at that or any of the others?

Mr. WHEELER. So thank you, Mr. Yarmuth. You know, I think we have to put this in perspective. This committee was very explicit and the court, Third Circuit, very explicit saying hey, it has been 8 years since you guys have made any kind of decision on this. It wasn’t because we weren’t trying. It was because there wasn’t a majority that would coalesce around an idea.

So step one is, is there a majority that will coalesce around an idea? Step two is, all of the Commissioners have not yet expressed themselves in this proceeding. And are there ways that those two groups can work together on this, and I think that is yet to be seen. But the point of the matter is that the reason we took this 2-year step is because for 8 years nobody has ever been able to figure out where is something we can all agree on, and that is still an item that is very much under discussion.

Mr. O’RIELLY. We are in the exact same spot as we were before. Nothing is going to change, yet the marketplace is changing before our very eyes.

Mr. WHEELER. That is the key thing. The market is changing, even Pokémon.

Mr. LANCE. Thank you very much. The Chair recognizes Mr. Johnson of Ohio.

Mr. JOHNSON. Thank you, Mr. Chairman, and I, too, thank the panel for being with us today.

Chairman Wheeler, the FCC recently levied a \$34.5 million fine against a Chinese company for selling equipment that is illegal in the United States, jammers. Did that Chinese company respond to the FCC in the course of the penalty proceeding to defend itself?

Mr. WHEELER. I can't answer that with specificity.

Mr. JOHNSON. Can you get back to me on that?

Mr. WHEELER. Yes, sir.

Mr. JOHNSON. OK, do you expect that the Treasury will ever see any of the \$34.5 million fine that the FCC assessed?

Mr. WHEELER. I quit hypothesizing some time ago.

Mr. JOHNSON. Let us take a wild guess, because I don't think we will. And that being the case, does it not give you concern about the enforcement mechanisms proposed in your set-top box proposal that will likely result in offshore companies manufacturing and selling set-top boxes in the United States? Are you going to have repeats of this kind of thing?

Mr. WHEELER. I understand your point. So one of the things that we are—this is on the table as we work through with the industry, what is the right kind of approach.

Mr. JOHNSON. Do you have concerns about collecting the money and enforcing, though, with your proposal as it is? I mean, if we can't enforce it on China—and you have no certainty that we can—how does your proposal stack up?

Mr. WHEELER. So the way the rulemaking works is—

Mr. JOHNSON. I know how the rulemaking works. Do you have concerns about the enforcement mechanism? That is a very narrow question.

Mr. WHEELER. And we are trying to resolve those concerns as we go through this process.

Mr. JOHNSON. So you do have concerns?

Mr. WHEELER. As we go through this process.

Mr. JOHNSON. OK, great.

Mr. WHEELER. It has been raised in—

Mr. JOHNSON. One of the things that we focused on is the uncertainty that results from poor processes. On May 4th of this year, an opinion and order was released by the Enforcement Bureau in a complaint proceeding. The complaint was filed with the FCC on May 13, 2004. It took the FCC almost 12 years to resolve the complaint. Were you aware of this?

Mr. WHEELER. Which proceeding are you speaking of, sir?

Mr. JOHNSON. I can get you that information. I don't have which specific proceeding, but are you aware of that?

Mr. WHEELER. I am not aware of that, sir.

Mr. JOHNSON. OK, I will follow up with questions for the record.

Mr. WHEELER. Great. Thank you.

Mr. JOHNSON. Also, Chairman Wheeler, you recently submitted the FCC's management report on Inspector General and other audit reports to the committee. The report discloses that in March

of last year the IG issued a report on the FCC's management of civil monetary penalties. I think the IG testified back in 2014 that he was going to do this and that the report found that the FCC had not collected all the penalties and fines that it could have.

You reported to this committee that of the IG's 13 recommendations, ten remain open. Is that correct? Do I have that number right?

Mr. WHEELER. I don't know by the count, sir. I know that we submitted the report to you.

Mr. JOHNSON. OK, but you reported to us that of the IG's 13 recommendations, 10 remain open. Do you know how many of the recommendations still remain open?

Mr. WHEELER. No, sir.

Mr. JOHNSON. You do not?

Mr. WHEELER. No, sir.

Mr. JOHNSON. Do you have any idea when the remaining recommendations will be closed out?

Mr. WHEELER. Working with the IG.

Mr. JOHNSON. Well, there is a lot you don't know today, isn't it? Is your memory failing, or what? You don't remember the report and the recommendations? I mean, you testified before this committee on these matters.

Mr. WHEELER. Yes, sir.

Mr. JOHNSON. Yes, sir to what? You do remember or you don't remember?

Mr. WHEELER. I am giving you straight and truthful answers.

Mr. JOHNSON. Well, no, you are saying you don't know. Can you get back to the committee on these things?

Mr. WHEELER. Yes, sir.

Mr. JOHNSON. I will turn these questions in as well. Commissioner O'Rielly, you blogged about the FCC's handling of penalties, is that correct?

Mr. O'RIELLY. That is accurate.

Mr. JOHNSON. Did the Chairman's office share this report with you?

Mr. O'RIELLY. I am not aware of that report, no, sir.

Mr. JOHNSON. You are not aware of the report.

How can this be a commission, Mr. Wheeler, Chairman Wheeler, when the report is not even shared with all the members of the Commission? You testified earlier that the majority of decisions are made unanimously among the Commission. How can you make decisions when a critical report like this is not shared with all the members?

Mr. WHEELER. No, I think it is shared with the members.

Mr. JOHNSON. He just said it is not. So your opinion differs from theirs.

Mr. Chairman, I yield back. We are not going to get to the bottom of this today. Thank you.

Mr. LANCE. Thank you very much. The Chair recognizes Mr. Rush of Illinois.

Mr. RUSH. I want to thank you, Mr. Chairman. It is always a pleasant time when the Commission comes before the subcommittee and I certainly want to welcome you all to this hearing.

Commissioner Clyburn, can you explain to me how does your set-top box proposal requiring pay TV to provide free information for those the device makers when worked with the cable industries ask and fetch model?

I heard from many in the cable industry that information flows does not exist in the network and that the FCC's set-top box proposal is impossible to comply with. Do you agree with this?

Ms. CLYBURN. So again, I am trying to wrap my head around your question. You are saying that there is a charge that our current proposal will not realize—if you could restate—

Mr. RUSH. There is no mechanism within the set-top box that will concur or will allow them to get the information that you are requesting from the manufacturers of the set-top boxes.

Ms. CLYBURN. So one of the things, if I am in sync with your question, one of the things that we are hoping for here is more competition and again, if there are either standards with the current set-top box ecosystem where there is a neutral agree-upon standard by a standard setting body, then I believe if I am answering your question, I am struggling a little bit, so forgive me if I am not understanding. A standard setting body would set the protocols that will enable the manufacturers to be in sync with what the ecosystem or what the protocols are in place. So if I am not reaching—

Mr. RUSH. I understand that the cable industry is saying that the information that you are requesting that it does not exist in their network and that your proposal that you have before—that you are considering is impossible because there is no way for them to gather the information.

Ms. CLYBURN. OK, so one of the things that we are discussing in this particular item is right now 99 percent of individuals rent their—get their set-top box, rent their set-top box from the particular provider whether it is a cable or a satellite provider.

What we are putting forth is whether or not this should be a more competitive regime, a more neutral, possibly a more neutral regime which a lot of people, especially those who are independent programmers are saying would be needed in order for more people to take part. So again, I will follow up with you. I am not sure I am hitting the mark, but that is my—

Mr. RUSH. I really appreciate your answer. Chairman Wheeler, how did you come to the conclusion, or the Commission come to the conclusion, that the FCC does not have a basis for instituting race- and gender-based standard preferences? Specifically, I am interested in what information study was emphasized and was collected to reach this conclusion.

Mr. WHEELER. Thank you very much, Congressman. This is one of the most vexing issues that the Commission faces. The Supreme Court in the Adarand decision was very strict in terms of what it said was possible. We have been trying to work our way through that.

What we did—an approach, I can't speak specifically to a specific item at this point in time, but an approach to that is to view things on a revenue basis and how is it that you can provide incentives to small businesses and should the Commission's policies follow that. And also then, how do we do things such as our JSA order,

which has resulted in an increase in minority ownership of broadcast.

Mr. RUSH. Mr. Chairman, earlier there was an initial 30 seconds granted to a member.

Mr. LONG [presiding]. OK, that is fine. We do have a vote, so we need to wrap it up pretty quick.

Mr. RUSH. I just want to ask a simple question. Chairman, what would be your response to a request for the FCC to review all of the research into the health risk of non-thermal exposure to RF radiation? I am concerned about that because as you know I am a cancer survivor.

Mr. WHEELER. Thank you, Congressman. We would be very receptive to the input from the scientific agencies of the Government, but for us to say that we are a scientific agency is a stretch.

Mr. RUSH. OK. Thank you. I yield back.

Mr. LONG. I thank the gentleman for yielding back and I now recognize myself for 5 minutes of questioning.

Chairman Wheeler, earlier Commissioner Pai was talking about some facts and figures and you referred to them as not—so-called facts, I think was your term. What I am going to refer to is not so-called, so I would like your response. The FCC's recent enforcement action against Total Call Mobile is the latest example of pervasive and ongoing waste, fraud, and abuse in the Lifeline Program. As part of that proceeding, the FCC directed Total Call to explain why Lifeline payments should not be suspended. Total Call failed to do so and you issued a second order temporarily suspending payments until it does comply. That tells me that in spite of everything Total Call is still participating in the Lifeline Program.

What does the FCC have to do to stop paying these companies? And what does the FCC have to do to kick them out of the program?

Mr. WHEELER. Thank you, Congressman. We have stopped to put them on notice that from May forward, they are not going to get paid. There are due process issues in here. They have rights. We have to make sure that those rights are followed, but we have, as of middle of June, end of June, I guess, put them on notice that we are not going to be funding.

Mr. LONG. OK, because I know that on March 7th which predates the middle of May, you were talking about, they were clearly aware of pending enforcement action for defrauding the program against them. Representatives of Total Call then met with Commission staff that discussed Total Call's development of Lifeline broadband products. They stated their plans on rolling out in California and eventually nationwide. What is the FCC doing to get the ratepayers' money back?

Mr. WHEELER. So we have, as I have said, we have told them we will not fund going forward and we have levied a \$57 million action against them.

Mr. LONG. OK. Thank you. Commissioner Rosenworcel—

Mr. WHEELER. \$51 million, I am sorry. \$51 million.

Mr. LONG. I thought that is what he said the first time.

Commissioner Rosenworcel, the Chairman has testified that the FCC is looking at the burdens placed on providers in order to make

it easier for carriers to participate in the Lifeline Program. Given the near decade of waste, fraud, and abuse reached over \$1 billion by the Chairman's estimate and with the recent enforcement action demonstrating that it continues, wouldn't it be fair for the American consumers and businesses that pay the bills to make it more difficult to ensure that these companies are going to play by the rules? Hasn't the FCC learned anything?

Ms. ROSENWORCEL. Listen, I appreciate the question. I think that Lifeline is an essential program. You don't have a fair shot in the 21st century if you don't have modern communications and frankly, I think that access to data has become the dial tone of the digital age. We are trying to update this program to reflect that and at the same time, get rid of waste, fraud, and abuse. And if we have bad actors, and companies that abuse this program, we should throw the book at them. We should fine them, and we should kick them out of the program.

Mr. LONG. OK, Thank you. Chairman Wheeler, if someone is using your credit card illegally and charging \$100 a month, let us say for a year when you discover and stop and stop those payments, do you consider that a savings or so when you stop finding illegal Lifeline subscribers, are they really saving American consumers and businesses that pay into the fund anything? Is there any savings there?

Mr. WHEELER. I know that his has been characterized that way. I think the fact of the matter is, Congressman, that there are many things to celebrate here. And that is that offenders were caught. Offenders were prosecuted. And the offenses were stopped and that there continues ongoing investigations both at the criminal level and at the civil level.

Mr. LONG. OK, thank you. Thank you for your testimony today. I am going to yield back the remainder of my time and give Mr. Collins the Chair and his time seeing as we have a vote, so hopefully we can adjourn instead of recessing and calling you all back.

Mr. WHEELER. Thank you, Congressman. The patient Mr. Collins.

Mr. COLLINS [presiding]. Thank you, and just in case, Chairman, could I get a note of missing a vote in case I do miss it.

Mr. WHEELER. To whom it may concern?

Mr. COLLINS. Yes, give me a "to whom it may concern," just in case I miss the vote. It is a motion to adjourn, which is just a procedural thing. It will vote 430 to 0, so if I do, I do.

And you know what, I don't have a question today on pirate radio.

Mr. WHEELER. I was ready.

Mr. COLLINS. I knew you were ready.

Mr. WHEELER. I was ready. I want to tell you there are 91 actions that have been taken through May of this year on pirate radio compared to 130 for all last year, and it is now taking up 20 percent of our field force time. We listened to you—

Mr. COLLINS. I will call that a success. If nothing else, when you look at me you think pirate radio, and when you sit at that spot at the end of the dais, you just have to pick the issue. You can always know someone else won't ask about.

Mr. WHEELER. But the other part about it—yes, you do have that certain image. But the other part about it is we weren't just looking at you. We are trying to listen to you and be responsive.

Mr. COLLINS. Well, no, Mr. O'Rielly even went and busted somebody in Brooklyn.

Mr. O'RIELLY. I appreciate the chairman's comment.

Mr. COLLINS. I wasn't even trying to bring up pirate radio. Actually, we all have the same issues and concerns. So let me just maybe end this hearing today talking about one issue that I think we would like some clarity on, and that is the issue of cell phones and the Telephone Consumer Protection Act. We always know that that came up when we had landlines. Now we have cell phones and the two in particular, one of them is I represent some folks that do the student debt collections on the Federal student loans. And I know recently the FCC did come out and I think took a step in clarifying that if someone is making a call on behalf of the Federal Government, then the TCPA does not apply other than the normal rules surrounding any call.

And the debt collection people just wanted me to ask you, Chairman, kind of a yes or no, that if they are making phone calls collecting on student debt, they would like clarity that the TCPA does not apply to them.

Mr. WHEELER. That is not what we said. We said the TCPA applies in that there are rules inside that. So the Congress, you all passed the statute saying that Federal debt collection should be allowed under TCPA. Then we said that there are several tests here under that. So for instance, is that the debt needs to be delinquent. OK?

Mr. COLLINS. OK, yes.

Mr. WHEELER. That there should be a limit on the number of calls that can be made a month.

Mr. COLLINS. Is there just a reasonable test on that?

Mr. WHEELER. No, it is three calls a month. That there ought to be a right to request the consumer to say stop. That is at the core of the TCPA, that I have got the right to say I don't want to harassed and if the consumer wants to say please don't be making these calls any more, that is at the core of TCPA.

Mr. COLLINS. If they were delinquent. They abided by the three calls and the consumer had not asked to stop and they make a phone call, then they are fine.

Mr. WHEELER. Yes, sir.

Mr. COLLINS. That is good.

Mr. WHEELER. There is a fourth component.

Mr. COLLINS. OK.

Mr. WHEELER. To be clear, which is a limit on the number of calls you make to a wrong number or to a reassigned number, but it is also a rational kind of a test.

Mr. O'RIELLY. I will just say I think the Chairman is talking about the one preceding, where it is responding to the act that Congress initiated in the budget piece. But we just recently issued and released an item on Broadnet that I think answers this particular issue because it gets to the point of whether the Federal Government is covered by TCPA and those collectors who are doing it on behalf of the Federal Government would not be covered and there-

fore we clarified that. So I think he is talking about the one item which we are going to clarify later this summer at some point, but I think it has been clarified——

Mr. WHEELER. I didn't understand your question to be about robocalls or about teletownhall. I thought it was about debt collection.

Mr. COLLINS. Debt collection on Federal student loans.

Mr. WHEELER. Yes, which is what we just laid out.

Mr. COLLINS. The four steps.

Mr. WHEELER. Yes, sir.

Mr. COLLINS. And again, just so I can be clear to my folks who may be watching this because they were actually saying they were afraid to make some phone calls because they would then be having a complaint, potential fines against them and they weren't—they were looking for some clarity, so again, if the loan is delinquent, they limit themselves to three phone calls. The consumer hasn't asked to stop and—what was the last one?

Mr. WHEELER. And only for debt collection and wrong numbers and reassigned numbers.

Mr. COLLINS. Then they are not subject to the TCPA.

Mr. WHEELER. That is what we are proposing.

Mr. COLLINS. The last issue is and the confusion again on the cell phone piece and the TCPA implied consent versus actual consent. So a consumer now fills out an application or registers on some Web site and one of the questions is can we have your cell phone number and they fill in the cell phone number. So some people are saying that is implied consent. You gave me your cell phone number, so I can call you. Others would say that no, maybe we should have an affirmative box they have to check, I hereby authorize you to call me.

And I know the FCC is looking into that and that is one of those things that right now is a little bit of a quagmire. I can't believe we are nuancing that, well, you filled it in, but you didn't check a box.

So really the question here is I am assuming that is an issue that the FCC is going to continue to work on and I just wondered if there is any time frame where that might be clarified?

Mr. WHEELER. The threshold of the statute was to give the consumer control and the question then becomes what is control? And yes, sir, we are working on that issue.

Mr. COLLINS. Very good. I am sure I did miss my vote, so if I could get that get-out-of-jail-free excuse from you when I leave.

I want to thank you all for coming. You know, I am not sure how often we will get the five of you back in this room because we have such a limited schedule, but if by some chance we don't, I want to as a new member of this committee thank you for our opportunity, mine personally, the last year and a half, this Congress, to interact with you. So the hearing of the Subcommittee on Communications and Technology is now adjourned. And I would like to remind Members that they have 10 days to submit questions for the record.

[Whereupon, at 1:34 p.m., the subcommittee was adjourned.]

[Material submitted for inclusion in the record follows:]



July 11, 2016

VIA EMAIL

The Honorable John Thune, Chairman
Committee on Commerce, Science & Transportation

The Honorable Bill Nelson, Ranking Member
Committee on Commerce, Science & Transportation

The Honorable Fred Upton, Chairman
Committee on Energy & Commerce

The Honorable Frank Pallone, Ranking Member
Committee on Energy & Commerce

The Honorable Greg Walden, Chairman
Subcommittee on Communications & Technology
Committee on Energy & Commerce

The Honorable Anna Eshoo, Ranking Member
Subcommittee on Communications & Technology
Committee on Energy & Commerce

Re: *Letter from legal scholars and economists concerning the Federal Communications Commission's Broadband Privacy NPRM*

Dear Senators Thune and Nelson, Congressmen Upton, Pallone and Walden, and Congresswoman Eshoo:

We, the undersigned experts in the law and economics of the Internet, have significant concerns with the proposal of the Federal Communications Commission ("Commission" or "FCC") to adopt new data privacy and security rules for broadband Internet access service providers ("ISPs") under Title II of the Communications Act.

We support strong consumer protection and believe that the Commission has a role to play in protecting consumers' data privacy and security. For several reasons, however, we find that the proposed rules take the wrong approach and would harm consumers, competition, and innovation.

As a fundamental matter, the proposed rules do not reflect the technological and economic nature of the Internet environment, in which ISPs are just one of many types of entities that have

access to and can use consumers' online information to provide services, including access to ad-supported content. The proposed rules would single out ISPs for heightened regulation, imposing strict opt-in consent requirements on their use and disclosure of customer information.

By contrast, other online entities—such as social media networks, operating systems, browsers, data brokers, and search engines—would operate under the Federal Trade Commission's ("FTC's") strong but flexible opt-out consent regime, which would allow them to continue collecting, using, and sharing information about consumers' online activities for a variety of commercial purposes. The FTC's framework focuses on stopping practices that truly harm consumers, allowing companies ample space to develop innovative and beneficial products and services.

As a result, the FCC's proposed rules would not only distort the marketplace in ways that are likely to increase costs to consumers, but also mark an unprecedented and unwarranted departure from the successful balance that has governed the Internet economy for the past couple of decades and which has led to substantial innovation, investment, competition, and growth.

Moreover, the asymmetrical regulatory framework that would be created by the proposed rules likely would confuse consumers and negatively affect the Internet economy.

Specifically, the Commission's proposal to require ISPs to obtain opt-in consent before using or disclosing consumers' data for most activities is diametrically opposed to the approach that the FTC has taken for decades and to which consumers have become accustomed. Consumers may not understand that the choices they make through their ISPs' opt-in mechanism do not apply to other participants in the Internet ecosystem, even though these other participants will be collecting exactly the same data and using it for exactly the same purposes (e.g., online advertising) as ISPs.

In addition, the free flow of data is the lifeblood of the Internet economy. **The proposed heightened consent requirements, however, would impede consumers' access to information about new online services and cost-savings that may be of interest to them and therefore would reduce ISPs' incentives to develop new services, reducing competition and innovation online.**

The Commission's failure to take these costs into account exemplifies its broader failure to conduct a full economic analysis of the proposed rules.

Finally, the Commission's proposed choice rules are unconstitutional because they would uniquely prohibit ISPs' use and disclosure of information for marketing purposes without obtaining consumers' opt-in consent. **By treating ISPs differently from other online entities, the proposed rules would create a discriminatory, speaker-based regime. Such a regime is presumptively invalid and subject to strict scrutiny, which the proposed rules could not withstand.** Nor could the proposed rules survive intermediate scrutiny: by requiring opt-in consent

for most first-party marketing and other activities, regardless of the potential for consumer harm, they are not narrowly tailored to advance a substantial governmental interest.¹

Fortunately, there is another path forward. **The Commission should adopt rules modeled after the FTC's longstanding and highly successful approach, which the FTC staff highlighted in its comments filed in this proceeding.** This technology-neutral approach — which applies an opt-in consent requirement to the use and sharing of sensitive information such as financial, health, children's, and precise geolocation data as well as social security numbers, plus robust notice and opt-out choice for other data uses — would provide strong, time-tested, and consistent privacy protections for consumers across the Internet ecosystem while fostering continued innovation, competition, investment, and growth.

Respectfully submitted,

(Affiliations provided for identification purposes only)

Laurence H. Tribe

Carl M. Loeb University Professor & Professor of Constitutional Law
Harvard Law School

Richard A. Epstein

Laurence A. Tisch Professor of Law, The New York University School of Law
The Peter and Kirsten Bedford Senior Fellow, The Hoover Institution
The James Parker Hall Distinguished Service Professor of Law Emeritus and Senior Lecturer, The University of Chicago

Robert Corn-Revere

Partner
Davis Wright Tremaine LLP

Robert D. Atkinson

President
Information Technology and Innovation Foundation

Jane Bambauer

Associate Professor of Law
University of Arizona
James E. Rogers College of Law

(continued)

¹ See also Professor Laurence H. Tribe and Jonathan Massey, "The Federal Communications Commission's Proposed Broadband Privacy Rules Would Violate the First Amendment," WC Docket No. 16-106 (May 27, 2016) (white paper detailing how the FCC's proposed rules would violate the First Amendment in various respects and should not be adopted).

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Paul H. Rubin

Samuel Candler Dobbs Professor of Economics
Emory University

Congress of the United States
Washington, DC 20515

July 12, 2016

Hon. Thomas E. Wheeler
Chairman
Federal Communications Commission
445 12th St. S.W.
Washington, D.C. 20554

Dear Chairman Wheeler:

We have been following with interest your response to the Third Circuit's decision in *Prometheus Media Project v. FCC*, Case No. 15-3863 (3d Cir., slip op., May 25, 2016) ("Prometheus III"). The Court accepted the FCC's promise to circulate an item that would rule on, *inter alia*, a package of long-pending proposals to advance minority media ownership. On June 27, you circulated such an item and issued a fact sheet that described, with specificity, your proposed actions on all of the issues in the item except the minority ownership proposals.

The centerpiece of the minority ownership package is a proposal by the Multicultural Media, Telecom and Internet Council (MMTC) - endorsed unanimously by the FCC's (former) Advisory Committee on Diversity for Communications in the Digital Age - to extend the 1992 Cable Act's MVPD Procurement Rule to all entities regulated by the FCC.

The MVPD Procurement Rule is a good foundation and more must be done. The rule has generated no litigation and has been embraced by industry and civil rights stakeholders alike. Under the Rule, cable and satellite operators annually provide the Commission with details on the steps they take to provide equal procurement opportunities to minority and women suppliers. The Rule has been instrumental in building a competitive procurement environment in which diverse firms provide cable and satellite companies with construction and deployment services, programming, legal and accounting services, call center operations and much more. While more needs to be done, these foundational rules need to be applied to other communications and tech companies.

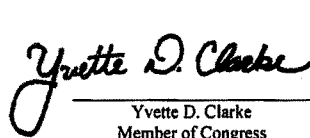
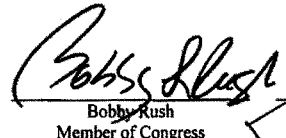
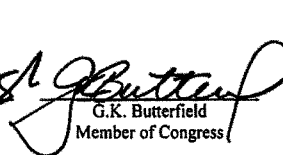
More specifically, the time has come to extend the MVPD Procurement Rule to all FCC regulated entities. All media and telecom industries are rapidly converging: they certainly share the same procurement ecosystems. Consequently the FCC has quite properly emphasized "platform neutrality" in regulating them. Extending the MVPD Procurement Rule across all platforms would recognize industry convergence, affirm platform neutrality, and affirm the FCC's deep commitment to advance equal opportunity in the digital age.

While the FCC clearly is empowered to regulate the procurement practices of its Title II, Title III and Title VI regulatees, it cannot directly regulate Title I information services. However, in its role as a purchaser of a large volume of goods and services, the federal government has the ability to leverage superior procurement programs among its vendors. Most Title I information services are very large government contractors, and these firms tend to have among the least effective procurement programs. Initially, you should ask these firms to voluntarily provide the Commission with procurement program information comparable to the information that regulatees provide pursuant to the MVPD Procurement Rule. If this request is met with resistance, you should ask the General Accounting Office to gather and report on these programs so that each federal agency can determine how to ensure that in its purchasing of goods and services, it is not using taxpayers' dollars to underwrite minority exclusion from suppliers' procurement pipelines.

Extension of the highly successful MVPD procurement rule to all regulatees - and a request for voluntary compliance by Title I information services backed up by a referral to the GAO - would open the doors so that billions of procurement dollars can flow to minority and women owned companies in the next decade. It would be the single most powerful step the Wheeler Commission could take to establish its civil rights legacy for years to come.

Please advise us of your plans to address this issue.

Sincerely,

 Yvette D. Clarke Member of Congress	 Bobby Rush Member of Congress	 G.K. Butterfield Member of Congress
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Automakers, ITS Community Call on FCC to Protect the Safety Spectrum

WASHINGTON, DC, JULY 8, 2016 – Automakers and intelligent transportation organizations urged the Federal Communications Commission (FCC) to focus on safety first when considering changing the rules of the 5.9 GHz Safety Spectrum band in [comments](#) filed yesterday.

“Decisions over sharing the Safety Spectrum should be driven first and foremost by public safety,” said Global Automakers President and CEO John Bozzella. “Vehicle-to-vehicle (V2V) technology, which is ready today, has the potential to prevent over 1,000 deaths a year. The future of this significant lifesaving technology lies in the hands of the FCC.”

The 5.9 GHz Safety Spectrum was allocated by the FCC in 1999 for the purpose of intelligent transportation systems (ITS) designed to bring tremendous safety benefits for consumers. The FCC is considering a proposal to reconfigure the 5.9 GHz band that would sweep away decades of research and development and delay lifesaving benefits.

“V2V communications will help move us from crash survival to crash avoidance – the future of improved highway safety,” said Alliance of Automobile Manufacturers President and CEO Mitch Bainwol. “Despite the greater number of vehicles on our roads and the increase in miles driven, if we make the right policy choices, safety outcomes can be strengthened and fewer families will suffer needless loss. That’s why spectrum is so important and why a ‘do no harm’ approach to 5.9 is absolutely imperative.”

V2V communication technology using Dedicated Short Range Communications (DSRC) operates within the 5.9 GHz Safety Spectrum to help avoid crashes and reduce fatalities. This connected car technology has been extensively tested by the U.S. Department of Transportation, automakers, and experts in advanced automotive systems.

“Connected vehicle technology and other intelligent transportation systems are transforming safety and mobility on our nation’s roadways,” said Regina Hopper, President and CEO of ITS America. “Time-critical communications of these safety systems must be able to operate without delay, and the FCC’s exploration of spectrum sharing must take that into account.”

V2V communication technology is also an important building block toward automated vehicles. The auto industry supports the efficient use of spectrum and rigorous testing to determine whether the 5.9 GHz band can be safely shared with other unlicensed users.

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The Association of Global Automakers represents international motor vehicle manufacturers, original equipment suppliers, and other automotive-related trade associations. We work with industry leaders, legislators, and regulators to create the kind of public policy that improves vehicle safety, encourages technological innovation, and protects our planet. Our goal is to foster a competitive environment in which more vehicles are designed and built to enhance Americans’ quality of life. For more information, visit www.globalautomakers.org.

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Understanding and Appreciating Zero-Rating: The Use and Impact of Free Data in the Mobile Broadband Sector

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The Multicultural Media, Telecom and Internet Council (MMTC) is a national nonprofit organization dedicated to promoting and preserving equal opportunity and civil rights in the mass media, telecommunications and broadband industries, and closing the digital divide. MMTC is generally recognized as the nation's leading advocate for minority advancement in communications. www.mmtconline.org.

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**UNDERSTANDING AND APPRECIATING ZERO-RATING:
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TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	AN OVERVIEW OF FREE DATA IN THE U.S. MOBILE BROADBAND SECTOR	3
A.	The What and Why of Free Data	3
B.	A Summary of Current Free Data Offerings.....	5
C.	Observations and Takeaways.....	7
III.	EVALUATING THE IMPACTS OF FREE DATA	8
A.	Impacts on the Digital Divide	9
B.	Impacts on Those Who Rely on Mobile Broadband Connectivity	10
C.	Impacts on Mobile Broadband Business Model Experimentation.....	11
D.	Impacts on Innovation in the Mobile Ecosystem	12
E.	Impacts on Consumer Empowerment	14
IV.	CONCLUSION	14

I. INTRODUCTION

The global telecommunications landscape is in an era of explosive growth, giving rise to the proliferation of high-speed Internet access and increasing consumer demand for greater and cheaper service. In the U.S., this Digital Age brings with it a multitude of communications policy issues, ranging from consumer protection and net neutrality to the looming spectrum shortage. In the midst of all this, telecommunications companies have created “zero-rating” or “free data” mobile plans to meet the increased consumer demand and competition within the industry.

Wherever one stands on the open Internet debate in the United States, the new reality is that consumers have overwhelmingly selected mobile offerings that provide free data to their users. Despite the uncertainty surrounding the Federal Communications Commission’s (FCC) open Internet ruling,¹ competitive pressures and insatiable consumer demand continue to drive firms to deliver more robust and tailor-made services to end-users.² The source of much of this innovation is the necessity for mobile broadband service, which all consumers – and especially low-income households and consumers of color – increasingly rely on.³ Wireless Internet connectivity delivers a range of benefits to users in these communities, and it serves as the foundation for a blossoming “Internet of things” that promises to disrupt and restructure key sectors and services such as healthcare and education.⁴

In addition to deploying next-generation networks that encourage the design of innovative devices and foster the creation of cutting-edge apps and content, firms in this space are also engaged in

¹ See *Protecting & Promoting the Open Internet*, Report & Order on Remand, Declaratory Ruling & Order, 30 FCC Rcd 560 (rel. March 12, 2015) (hereinafter *Open Internet Order*).

² On many occasions in the past, MMTc and numerous other civil rights organizations have highlighted the likely negative impacts of imposing common carrier regulation on wired and wireless broadband service providers. See, e.g., *In the Matter of Protecting and Promoting the Open Internet*, Comments of the National Minority Organizations, p. 8-11, GN Docket No. 14-28 (July 18, 2014), available at <http://mmtconline.org/wp-content/uploads/2014/07/Natl-Minority-Orgs-Open-Internet-Comments-071814.pdf>. Since adoption of the Open Internet Order, there have been several analyses indicating an overall decrease in investment by ISPs. See, e.g., Hal Singer, *ISP Capital Expenditures in the Title II Era (4Q Edition)*, Feb. 24, 2016, Hal Singer blog, available at <https://hal.singer.wordpress.com/2016/02/24/isp-capital-expenditures-in-the-title-ii-era-4q-edition/> (“Across this sample of the twelve largest ISPs, capex growth was slightly negative in 2015. The net change for the year was -0.4 percent, down nearly a quarter of a billion from 2014 levels.”).

³ See, e.g., John B. Horrigan & Maeve Duggan, *Home Broadband 2015*, Pew Research Center (Dec. 21, 2015), available at <http://www.pewinternet.org/files/2015/12/Broadband-adoption-full.pdf> (finding that African Americans and low-income households have among the highest percentages of broadband users who rely just on their smartphones to access the Internet) (hereinafter “*Home Broadband 2015*”); Giulia McHenry, *Evolving Technologies Change the Nature of Internet Use*, April 19, 2016, NTIA blog, available at <https://www.ntia.doc.gov/blog/2016/evolving-technologies-change-nature-internet-use> (finding that “low-income households that used the Internet at home were significantly more likely to depend on a mobile data plan than those with higher incomes. The data shows 29 percent of online households with family incomes below \$25,000 only used mobile Internet service at home, compared with 15 percent of those households with incomes of \$100,000 or more.”) (hereinafter “*Evolving Technologies*”).

⁴ See, e.g., David Honig & Nicol Turner-Lee, *Refocusing Broadband Policy: The New Opportunity Agenda for People of Color*, MMTc (Nov. 21, 2013), available at <http://mmtconline.org/wp-content/uploads/2013/11/Refocusing-Broadband-Policy-112113.pdf> (hereinafter “*Refocusing Broadband Policy*”).

nonstop experimentation with packages of services they hope will resonate with existing consumers and attract new subscribers. Such unceasing jockeying for market share, which has characterized the mobile space for decades, has yielded a range of options for consumers to make calls, send texts, and consume data on the terms and at the price of their choosing.⁵ To that end, one of the key points of competition among mobile broadband providers is the provision of free data services. While several different kinds of free data services exist, a feature they have in common is that they provide consumers with the option of consuming data-intensive services such as streaming video without depleting their monthly data allowance.⁶ To date, free data has proven to be enormously popular with consumers, a fact that is supported both by survey data and by the rapid proliferation of this particular business model across the market.⁷

Despite such popularity and promise, however, free data has come under attack as being contrary to the “spirit and the text” of the FCC’s open Internet regime.⁸ In particular, those opposed to providing consumers with more control over their data consumption and more diverse pricing options fear that zero-rated services will instead deliver to users an incomplete online experience.⁹ But as discussed at length in this paper, these views ultimately overlook and dismiss the benefits of free data, many of which accrue most immediately to people of color and low-income households – communities that are benefitting from mobile broadband access in much more profound ways than other user groups because it is more likely that they cannot afford other means of home broadband access.¹⁰

Zero-rating is also poised to play a key role in helping to close the digital divide by addressing cost concerns and strengthening the value proposition offered to skeptical non-users, two key considerations for the millions of Americans who remain offline.¹¹ The actual contours of the free data plans are fluid, responsive to consumer demand, optional, and, unlike many other online offerings, they do not rely on targeted ads to pay for the data. Accordingly, policymakers should not categorically ignore the very real benefits of free data and should instead allow this kind of

⁵ See, e.g., *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions With Respect to Mobile Wireless, Including Commercial Mobile Services*, Eighteenth Report, WT Docket No. 15-125, DA 15-1487 (rel. Dec. 23, 2015), available at https://apps.fcc.gov/edocs_public/attachmatch/DA-15-1487A1.pdf (providing an overview).

⁶ The nuances of specific free data services currently on offer are discussed in section II.

⁷ See Dr. Robert Roche, *America Loves #FreeData*, April 7, 2016, CTIA blog, available at <http://www.ctiatest.org/2016/04/07/americans-love-freedata/> (reporting the results of a survey that found overwhelming support for free data services among U.S. adults of all ages) (hereinafter “CTIA Survey”).

⁸ See *Letter from 18MillionRising.Org et al. to FCC Chairman Wheeler*, March 28, 2016, <https://static.newamerica.org/attachments/12903-zero-rating-plans-are-a-serious-threat-to-the-open-internet/FinalZeroRatingSign-OnLetter.f929bef59a5423089a496b4f909fb97.pdf>.

⁹ *Id.*

¹⁰ See, e.g., James E. Prieger, *The Broadband Digital Divide and the Benefits of Mobile Broadband for Minorities*, *The Journal of Economic Inequality*, Vol. 13, Iss. 3 (Sept. 2015), draft available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=2258081 (providing data and analysis regarding the many benefits of mobile broadband for minorities and noting the “particular promise that [it] may hold for minorities regarding social, medical, and economic inclusion.”).

¹¹ See, e.g., *Home Broadband 2015* (providing data about primary barriers to broadband adoption).

innovation and experimentation to continue without unnecessary interference. Moreover, as discussed below, offering “free stuff” is at the core of attracting consumers in virtually every other American industry, *e.g.* fast food (meal deals), online purchases (free shipping), and Buy-One-Get-One (“BOGO”) offers.

II. AN OVERVIEW OF FREE DATA IN THE U.S. MOBILE BROADBAND SECTOR

The basic arrangement at the heart of many free data offerings – *i.e.*, providing consumers with something for free to attract or retain their business – is neither new nor unique to the telecommunications space. Loyalty programs of all kinds, for example, often offer customers a number of free upgrades or exclusive deals. Amazon Prime, for example, provides subscribers with free shipping for most physical goods; companies such as Pandora and Netflix offer unlimited streaming media services for video and music.¹² In the communications space, this model has deep roots. Over-the-air broadcast television and radio has always been free because programming is subsidized by advertisers. Most websites rely on the same dynamic. Similarly, toll-free calling, which has been around for nearly 50 years, remains enormously popular among consumers and companies alike.¹³

Viewed in this way, free data in the mobile space is nothing more than the adaptation of similar business practices in sectors spanning the entirety of the U.S. economy. As discussed in this section, current free data offerings by U.S. mobile broadband providers include many attributes of these common practices, while also integrating aspects that reflect the unique nature of wireless service. This section begins with an overview of the general mechanics of free data in the mobile space, including a discussion of the different kinds of zero-rated services and the rationales for offering them. It then summarizes the free data offerings of the four major mobile broadband Internet service providers in the U.S. and offers some observations and takeaways about this evolving business practice in the wireless sector.

A. The What and Why of Free Data

In the mobile space, there are two general categories of free data: zero-rated content and sponsored data. Both allow customers to consume particular kinds of content without the data from those uses counting toward their monthly data allowances.¹⁴ The difference between the two, though, stems from the arrangements between the content producer and the mobile service provider. When content is *zero-rated*, it means the service provider and content producer have made an agreement to offer “free mobile data to allow customers to access particular online content or services at no

¹² See, *e.g.*, Amazon Prime, About, <https://www.amazon.com/gp/help/customer/display.html?nodeId=200444160>.

¹³ See, *e.g.*, Charles Fishman, *The Man Who Invented 1-800*, Oct. 31, 1997, Fast Company, available at <http://www.fastcompany.com/33383/man-who-invented-1-800>.

¹⁴ *Open Internet Order* at ¶ 151.

additional cost.”¹⁵ These agreements usually do not include the exchange of money, but they can involve adherence by the content producer to certain technical requirements or other criteria set by the service provider.¹⁶ *Sponsored data*, on the other hand, revolves around payment by a content producer to the service provider to deliver specific content without it counting against a data allowance.¹⁷ This echoes the structure of toll-free calling arrangements that have existed for nearly half a century, wherein “[t]he charge for using a toll free number is paid by the called party (the toll free subscriber) instead of the calling party.”¹⁸

Mobile broadband service providers are experimenting with these kinds of offerings for several related reasons. In general, they are responding to profound shifts in how consumers use wireless services. The growth of wireless data consumption over the last few years has been remarkable. By the end of 2015, the average smartphone owner in the U.S. consumed almost four gigabytes of data each month,¹⁹ compared with just 350 megabytes each month in 2010.²⁰ Previously, wireless service plans were built around calling and texting options; now they feature mobile data, with phone and texting seen as secondary offerings.²¹ The explosion of mobile data usage was made possible by the widespread availability of 3G and 4G wireless networks, but the technical limitations inherent in these systems – a unique feature of the wireless market owing to the innate capacity constraints of spectrum and the limited availability of additional spectrum assets, among other factors²² – precipitated a shift to usage-based pricing.²³ Free data has become a way for service providers to cater to consumer demand for streaming video and other data-intensive services by providing the means for consuming popular content without exceeding data

¹⁵ See Noelle Francesca de Guzman, *Zero Rating: Enabling or Restricting Internet Access?*, Sept. 24, 2014, Internet Society blog, available at <https://www.internetsociety.org/blog/asia-pacific-bureau/2014/09/zero-rating-enabling-or-restricting-internet-access>.

¹⁶ The T-Mobile programs discussed below are prime examples of zero-rated services.

¹⁷ See, e.g., Diana Carew, *Zero-Rating: Kick-Starting Internet Ecosystems in Developing Countries*, at p. 2 Progressive Policy Institute (March 2015), available at http://www.progressivepolicy.org/wp-content/uploads/2015/03/2015.03-Carew_Zero-Rating_Kick-Starting-Internet-Ecosystems-in-Developing-Countries.pdf (hereinafter “*Kick-Starting*”).

¹⁸ See *What is a Toll Free Number and How Does it Work?*, FCC Consumer Guide, available at <https://www.fcc.gov/consumers/guides/what-toll-free-number-and-how-does-it-work>.

¹⁹ See *U.S. Wireless Market Update 2015*, at slide 7, Chetan Sharma Consulting (March 2016), available at http://www.chetansharma.com/US_Wireless_Market_2015_Update_Mar_2016_Chetan_Sharma_Consulting.pdf.

²⁰ See *U.S. Wireless Market Update Q4 2010 and 2010 Update*, at slide 3, Chetan Sharma Consulting (Feb. 2011), available at <http://www.chetansharma.com/US%20Wireless%20Market%20Q4%202010%20and%202010%20Update%20-%20Feb%202011%20-%20Chetan%20Sharma%20Consulting.pdf>.

²¹ According to recent CTIA data, the amount of voice minutes used and text messages sent has been flat in recent years after growing exponentially for much of the previous decade. See *Annual Wireless Industry Survey*, CTIA, available at <http://www.ctia.org/your-wireless-life/how-wireless-works/annual-wireless-industry-survey>.

²² See, e.g., *Connecting America: The National Broadband Plan*, at p. 77-79, FCC (March 2010), available at <https://transition.fcc.gov/national-broadband-plan/national-broadband-plan.pdf> (hereinafter “*National Broadband Plan*”).

²³ See, e.g., Daniel A. Lyons, *Internet Policy's Next Frontier: Data Caps, Tiered Pricing Plans, and Usage-Based Broadband Pricing*, 66 Fed. Comm. L. J. 1, 11 (2013), available at <http://lawdigitalcommons.bc.edu/cgi/viewcontent.cgi?article=1602&context=lsfp>.

allowances. For communities of color, this gives consumers more opportunity to explore other needs in the digital space, such as access to jobs and healthcare information, without exceeding their data limits.

This type of experimentation is part of a larger evolution of wireless service offerings. One-size-fits-all plans based around unlimited offerings of talk, text, and/or data have been replaced with a menu of options from which consumers can choose the components and price points that match their needs. A key attribute of enhanced choice in this context is that the amount each user pays for service will more accurately reflect their actual consumption of mobile services.²⁴ The benefits of such enhanced choice have accrued most immediately to minorities and low-income households — the very communities that rely on or prefer these services for Internet connectivity.²⁵ Such flexibility also provides new opportunities for wireless providers to offer free services such as zero-rated content in an attempt to further expand their customer base by attracting cost-conscious non-subscribers.²⁶

B. A Summary of Current Free Data Offerings

Over the last few years, each of the four national mobile broadband service providers has made free data packages available to its subscribers. The following provides a summary.

AT&T, an early mover, launched a sponsored data program in January 2014 so its customers could “browse, stream and enjoy content from...data sponsors without impacting their monthly data plan allowance.”²⁷ To date, AT&T has partnered with a small number of firms that work with content producers to deliver sponsored data to subscribers.²⁸ These offerings range from free movie trailers and other video content, to a suite of word processing tools.²⁹ They also include “wellness videos” and other healthcare-related content.³⁰ These sponsored data services are available to “post-paid and DataConnect Pass session-based customers” with a “4G...capable device...and access [to] the

²⁴ *Id.* at p. 12.

²⁵ See, e.g., Robert Shapiro and Kevin Hassett, *A New Analysis of Broadband Adoption Rates by Minority Households*, at p. 8, Georgetown Center for Business and Public Policy in the McDonough School of Business (June 2010), available at http://www.sonecon.com/docs/studies/Report_on_Broadband_Pricing_and_Minorities-Shapiro-Hassett-June-21-2010.pdf (noting that “some observers believe that the greater use of wireless services [by minorities] is a reflection of the wide range of pricing options, which include plans that subsidize the cost of wireless devices.”).

²⁶ See, e.g., Jeffrey A. Eisenach, *The Economics of Zero Rating*, NERA (March 2015), available at <http://www.nera.com/content/dam/nera/publications/2015/EconomicsofZeroRating.pdf> (hereinafter “*Economics of Zero Rating*”). For further discussion, see section III.

²⁷ See AT&T Sponsored Data, FAQ, <http://www.att.com/att/sponsoreddata/en/index.html#tab2> (hereinafter “AT&T FAQ”).

²⁸ For an overview, see AT&T Sponsored Data, Home, <http://www.att.com/att/sponsoreddata/en/index.html>.

²⁹ *Id.* See also Press Release, *AT&T Introduces Sponsored Data for Mobile Data Subscribers and Businesses*, Jan. 6, 2014, AT&T, available at <http://www.att.com/gen/press-room?pid=25183&cdvn=news&newsarticleid=37366&mapcode=&partner=LinkShare&siteId=TnL5HPStwNw-1heblblLbUC2VgqPrXdQQ>.

³⁰ AT&T FAQ.

Sponsored Data over AT&T's domestic wireless network."³¹ A related offering is Data Perks, an app "through which [users] earn extra data...by completing a featured offer, like taking a survey or completing a purchase."³² This program was developed with Aquato, a partner with AT&T in its Sponsored Data program.

Sprint, under both its *Virgin Mobile* and *Boost Mobile* prepaid brands, offers customers zero-rated music streaming. The Virgin Mobile program, called Data-Free Music, lets subscribers stream as much content as they want from Pandora, iHeartRadio, Slacker, 8tracks, and Milk Music.³³ Customers are responsible for paying subscription fees to those services if applicable. Data-Free Music is available to all subscribers with 3G and 4G-capable phones and who have any monthly plan that includes data.³⁴ Under a separate program – a partnership with Walmart that sells 4G phones and data plans – Virgin Mobile customers also have the option of paying an additional \$5 per month to use specific apps – Facebook, Instagram, Pinterest, Pandora, and Twitter – without incurring data charges.³⁵ Boost Mobile's zero-rated music program, which was announced in December 2015, mirrors Virgin Mobile's Data-Free Music in many ways, including offering customers the same set of options and websites for streaming music.³⁶

T-Mobile has been among the most aggressive in exploring free data offerings as it focused on rebranding itself as the "un-carrier" in recent years. Its first zero-rated program, Music Freedom, was launched in June 2014.³⁷ From the start, customers subscribing to a Simple Choice plan could stream as much music as they wanted from partner sites such as Pandora, Rhapsody, and Spotify.³⁸ Since then, the number of partners in Music Freedom has eclipsed 40,³⁹ "covering a full 96% of all music streamed by T-Mobile customers."⁴⁰ In November 2015, T-Mobile launched Binge On, a similar program for streaming video.⁴¹ As part of this program, "any customer with a qualifying

³¹ *Id.*

³² See AT&T, Data Perks – FAQ, <http://www.att.com/att/dataperks/en/index.html>.

³³ See Virgin Mobile, Data-Free Music, <https://www.virginmobileusa.com/?intid=MOBILE:AB:HERO4:160215:BT:DFMLM#!/datafreemusic/>.

³⁴ See Virgin Mobile, Data-Free Music – FAQ, http://virginmobileusa.custhelp.com/app/answers/detail/a_id/5871.

³⁵ See Virgin Mobile, Data Sharing Done Right, <https://www.virginmobileusa.com/#!/datashare/>. See also Press Release, *Enhanced Virgin Mobile Data Done Right Multi-line Plans Now Offer Even More Data, Available Exclusively At Walmart*, May 15, 2015, Sprint, available at <http://newsroom.sprint.com/news-releases/enhanced-virgin-mobile-data-done-right-multi-line-plans-now-offer-even-more-data-available-exclusively-at-walmart.htm>.

³⁶ See Press Release, *Boost Mobile Adds Unlimited Music Streaming*, Dec. 9, 2015, Boost Mobile, available at <http://newsroom.boostmobile.com/press-release/products-offers/boost-mobile-adds-unlimited-music-streaming>.

³⁷ See Press Release, *T-Mobile Sets Your Music Free*, June 18, 2014, T-Mobile, available at <https://newsroom.t-mobile.com/news-and-blogs/t-mobile-sets-your-music-free.htm>.

³⁸ *Id.*

³⁹ See T-Mobile, Music Freedom, <http://www.t-mobile.com/offer/free-music-streaming.html#>.

⁴⁰ See Press Release, *Now, More Than 100 Services Stream Free With T-Mobile's Binge On and Music Freedom*, April 5, 2016, T-Mobile, available at <https://newsroom.t-mobile.com/news-and-blogs/binge-on-music-freedom-new-services.htm> (hereinafter "More Than 100").

⁴¹ See Press Release, *T-Mobile Unleashes Mobile Video with Binge On*, Nov. 10, 2015, T-Mobile, available at <https://newsroom.t-mobile.com/media-kits/un-carrier-x.htm>.

3GB or higher data plan can stream unlimited video” from partner sites such as YouTube, Netflix, Hulu, ESPN, and other video providers that meet specific technical criteria.⁴² To accommodate such significant amounts of video traffic, the quality of the video is reduced.⁴³ The service is automatic, but subscribers have the choice to opt out if they do not want to participate.⁴⁴

Verizon’s sponsored data program, FreeBee Data, was launched in January 2016.⁴⁵ Like AT&T’s offering, Verizon’s free data approach is to partner with content producers that wish to sponsor particular kinds of data delivered to customers. For example, a production company could partner with Verizon to deliver movie clips to customers without access to them counting against monthly data allowances.⁴⁶ Larger content “campaigns,” promotional videos, podcasts, and other partner-provided content are also possible under FreeBee, which was launched in “beta” in order to further hone the program before making it widely available to all post-paid 4G customers.⁴⁷ A related program, FreeBee 360, is also available to content producers that wish to sponsor “some or all of the content on their mobile app or website.”⁴⁸ In February, Verizon announced that its video service, go90, would be available to subscribers via FreeBee 360, meaning that qualifying customers would be able to use that service without it counting against their data allotment.⁴⁹ This is not an exclusive arrangement – FreeBee is open to any content producer that wishes to partner with Verizon in a manner consistent with the program criteria.

C. Observations and Takeaways

The primary takeaway from the preceding analysis is that free data in the mobile broadband space is still evolving. Service providers are continually adjusting each of their programs in an effort to expand offerings, attract more partners, and cater to new consumer demands.⁵⁰ But overall, these programs are proving to be enormously popular with consumers. One recent survey, for example, found broad acceptance and use of these services – 84% of adults said they would be “extremely/somewhat likely to try a new online service if it is a part of a free data offering,” while 85% reported they were “extremely/somewhat likely to use more data if it didn’t count against

⁴² See T-Mobile, Binge On, <http://www.t-mobile.com/offer/binge-on-streaming-video.html>.

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ See, e.g., Jeff Baumgartner, *Verizon Launches ‘FreeBee Data,’* Jan. 19, 2016, Multichannel News, available at <http://www.multichannel.com/news/content/verizon-launches-freebee-data/396634>.

⁴⁶ See Verizon FreeBee Data – FAQ, <http://freebee.verizonwireless.com/business/support/faqs>.

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ See Press Release, *Verizon Wireless Customers Can Now Watch All Shows, Live Sports, and Concerts on go90 Without Using Up Data*, Feb. 5, 2016, Verizon, available at <http://www.prnewswire.com/news-releases/verizon-wireless-customers-can-now-watch-all-shows-live-sports-and-concerts-on-go90-without-using-up-data-300216126.html>.

⁵⁰ See, e.g., Jefferson Graham, *T-Mobile’s Revised Binge On Plan Includes YouTube*, March 17, 2016, USA Today, available at <http://www.usatoday.com/story/tech/2016/03/17/google-finds-compromise-t-mobiles-binge-81911348/> (reporting on how T-Mobile and Google worked together to bring YouTube into Binge On).

their monthly data usage.”⁵¹ Initial usage data from T-Mobile, the only provider to make such information available to date, supports these findings: via Binge On, “customers are watching 2x more from free streaming sites on plans with limited data,” and overall data consumption from streaming video and music through its two free data programs has soared in just a few months.⁵²

In spite of consumer benefits, free data offerings have not been met with universal acceptance. FCC Chairman Tom Wheeler initially praised Binge On and other programs, calling them “highly innovative and highly competitive.”⁵³ This echoed the conclusion the Commission made in its Open Internet Order regarding free data services, which noted that such “new service offerings, depending on how they are structured, could benefit consumers and competition” and also stated that the Commission would monitor the market for practices that it deemed “unreasonable.”⁵⁴ However, the Commission quickly reconsidered its initial reaction to free data plans and instead decided to take a skeptical approach to these otherwise normal market trends.⁵⁵

Others have framed free data offerings as contrary to the open Internet ruling. An important takeaway, then, is that free data remains vulnerable to the capricious political winds that are increasingly shaping the broadband ecosystem. Premature or unnecessary intervention by an entity like the FCC would likely chill further experimentation with offerings such as free data, an outcome that would prove devastating to consumers and contrary to the innovative ethos that has long permeated the U.S. wireless space. Ultimately, consumers should have the right to choose from better offerings and have the opportunity to be exposed to the breadth of relevant activities on the Internet.

III. EVALUATING THE IMPACTS OF FREE DATA

At a very superficial level, the benefits of free data appear obvious – mobile broadband customers have the ability to stream more music and video, thereby satisfying their demand for consuming media whenever, wherever, and however they want. These are significant benefits at a time when nearly half of all U.S. households rely on their cell phones for voice service,⁵⁶ a growing share of

⁵¹ *CTIA Survey*.

⁵² *More Than 100*. See also Sascha Segal, *New Study: T-Mobile's 'Binge On' is Working*, Jan. 15, 2016, PC Mag, available at <http://www.pcmag.com/article2/0,2817,2497994,00.asp> (summarizing an independent study of Binge On, which found the free data program to be “good for users, who get to watch more video; good for providers, who have more video exposed to users; and good for T-Mobile, which wrings more usage out of the same network capacity.”).

⁵³ See Dan Meyer, *Wheeler: T-Mobile Binge On Does Not Violate Net Neutrality*, Nov. 19, 2015, RCR Wireless, available at <http://www.rcrwireless.com/20151119/policy/wheeler-t-mobile-binge-on-does-not-violate-net-neutrality-tag2>.

⁵⁴ *Open Internet Order* at ¶ 152.

⁵⁵ See Jim Puzzanghera, *FCC Asking if Free-Data Plans from T-Mobile, AT&T and Comcast Break Internet Rules*, Dec. 17, 2015, L.A. Times, available at <http://www.latimes.com/business/la-fi-fcc-tmobile-free-video-20151217-story.html>.

⁵⁶ See Stephen J. Blumberg, Ph.D., and Julian V. Luke, *Wireless Substitution: Early Release of Estimates from the National Health Interview Survey, January-June 2015*, Centers for Disease Control and Prevention, U.S. Dept. of

all households are opting for wireless broadband over wired broadband,⁵⁷ and more than half of all mobile data traffic stems from video consumption.⁵⁸ Beyond these, however, the benefits and impacts of free data are much more profound and wide-ranging. As discussed in this section, these offerings hold enormous potential to:

- Help close the digital divide and bring more people online;
- Bolster the uses and experiences of those who rely on mobile broadband connections;
- Enhance mobile broadband business model experimentation;
- Support more robust and vibrant innovation in the mobile ecosystem; and
- Further empower mobile customers.

A. Impacts on the Digital Divide

Although zero-rating is relatively new in the U.S., a range of private companies and other entities have already explored the use of zero-rating as a means of connecting more citizens to the Internet in other countries. Companies such as Facebook and Wikipedia, for example, have partnered with local wireless service providers in a number of developing countries to deliver zero-rated access to a suite of resources, including their sites and apps.⁵⁹ There have been numerous benefits as a result: participating companies have grown their global brand by building a broader user base, local users have had access to more affordable Internet, and tech ecosystems have been incentivized to develop their own services to meet new demands.⁶⁰ These same dynamics and impacts are increasingly evident in the United States. Indeed, although the U.S. mobile sector and overall economy are far more advanced than in most other countries that have explored these offerings, free data nevertheless holds as much, if not more, potential for bridging stubborn connectivity gaps.

The digital divide in the U.S. has existed since the earliest days of the commercial Internet.⁶¹ The characteristics of the gap between those who are online and those who are not have remained mostly unchanged – in general, Internet connectivity continues to correlate with age, income, and educational attainment.⁶² Broadband adoption has also long lagged among African Americans and

Health & Human Services (Dec. 1, 2015), available at <http://www.cdc.gov/nchs/data/nhis/earlyrelease/wireless201512.pdf>.

⁵⁷ *Evolving Technologies*.

⁵⁸ See *Cisco Visual Networking Index: Global Mobile Data Traffic Forecast Update, 2015–2020 White Paper*, Feb. 1, 2016, Cisco, available at <http://www.cisco.com/c/en/us/solutions/collateral/service-provider/visual-networking-index-vni/mobile-white-paper-c11-520862.html>.

⁵⁹ See, e.g., *Economics of Zero Rating* at p. 2-3.

⁶⁰ See, e.g., *Kick-Starting* at p. 2.

⁶¹ The digital divide was first formally explored by the federal government in the mid-1990s. See *Falling Through the Net: A Survey of the "Have Nots" in Rural and Urban America*, NTIA (June 1995), available at <https://www.ntia.doc.gov/ntiahome/fallingthru.html>.

⁶² *Id.* For recent data, see *Home Broadband 2015*.

Hispanics.⁶³ Although the specific reasons for non-adoption vary from community to community, two primary and related impediments to greater connectivity are now widely accepted: many do not see broadband as relevant to their everyday lives, and there is a perception that Internet connectivity is too expensive.⁶⁴

Free data helps to address these barriers by enhancing the value proposition for non-adopters. The ability to stream as much video and music content as possible – activities that are among the most popular wireless uses across every user group⁶⁵ – could become an enticing on-ramp for non-users: if they come to wireless broadband for unlimited Netflix streaming, they may very well stay online and use their connections for additional, more meaningful uses. For those who perceive broadband of any kind – wired or wireless – to be too expensive, the promise of free data could allow them to purchase more basic plans with lower data caps, which would deliver significant monthly cost-savings.

For many years, there has been a bias toward equating true broadband connectivity with access to a wired connection at home from a desktop or laptop computer. Others have raised concerns about the existence of charges for exceeding data allowances as a potential costly pitfall for low-income and minority households that use only mobile broadband to go online.⁶⁶ However, there is a national trend away from “traditional” broadband access as more and more households, led by people of color and low-income consumers, embrace mobile broadband and view it as a substitute for a wired connection.⁶⁷ Mobile devices such as tablets are increasingly taking on the functionality of traditional laptop and desktop computers, including access to word processing and other programs in addition to the Internet. As such, the availability of a diverse array of free data options is critical to efforts focused on closing the digital divide because they represent a viable workaround to data cap costs and are a generally appealing feature for non-adopters. Coupled with recent proposed reforms to the federal Lifeline program, there appears to be considerable momentum toward finally achieving digital connectivity and equality for all Americans.⁶⁸

B. Impacts on Those Who Rely on Mobile Broadband Connectivity

Many of the potential benefits of free data for non-adopters are proving to be actual benefits for existing users who rely on mobile broadband connectivity as their primary on-ramp to the Internet. As noted previously, mobile broadband has become an indispensable tool for people of color and

⁶³ *Id.*

⁶⁴ See, e.g., *Home Broadband 2015: Refocusing Broadband Policy*;

⁶⁵ See generally Aaron Smith, *U.S. Smartphone Use in 2015*, Pew Research Center (April 1, 2015), available at http://www.pewinternet.org/files/2015/03/PI_Smartphones_0401151.pdf (hereinafter “*U.S. Smartphone Use in 2015*”).

⁶⁶ See, e.g., *Home Broadband 2015* at p. 3-4.

⁶⁷ *Evolving Technologies*.

⁶⁸ For further discussion of the importance of Lifeline reform to bolstering broadband adoption among low-income and minority consumers, see Nicol Turner-Lee et al., *A Lifeline to High-Speed Internet Access: An Economic Analysis of Administrative Costs and the Impact on Consumers*, MMTTC (March 2016), available at <http://mmtconline.org/WhitePapers/March2016-Lifeline-Analysis-Consumer-Impact.pdf>.

low-income households. For many years, these users have been among the most intense users of wireless services, and free data promises to deliver additional benefits to these communities.

As far back as 2009, people of color, especially African Americans, emerged as the most avid users of mobile devices to access the Internet.⁶⁹ This trend has continued over the last seven years even as other demographic groups have caught up.⁷⁰ Such reliance, however, has caused some to highlight perceived limits of mobile broadband, especially with regard to potential constraints on Internet use caused by data allowances. A recent survey, for example, found that people of color and low-income households are more likely than others to have higher-than-expected monthly wireless bills due to overages and to have had their service canceled or cut off for financial reasons.⁷¹ The popularity of data-intensive streaming media services is a likely culprit, which is why free data represents such an enormous opportunity.

Free data can help these communities save on monthly bills by keeping data use within their allotments, which could, in turn, provide them with the opportunity to choose more affordable plans (e.g., plans with smaller data allowances). Equally as important, having more data available by being able to stream media via a free data program could encourage consumers to use their devices in other, more meaningful ways. For example, mobile broadband consumers are increasingly using their devices to “navigate numerous important life events” such as searching for health information, using online banking, researching employment opportunities, and accessing government benefits.⁷² As noted in many previous analyses, these particular uses are of enormous value to communities of color and low-income households.⁷³ Having more data available to engage in these uses would be an essential advantage to these communities and to every other consumer.

C. Impacts on Mobile Broadband Business Model Experimentation

Among the many notable trends evident throughout the ongoing evolution of the wireless sector in the United States is the consistency with which policymakers have afforded this space considerable latitude to grow, innovate, and compete. Since the early 1990s, when Congress implemented a national regulatory framework for wireless, the mobile sector has blossomed

⁶⁹ See John Horrigan, *Wireless Internet Use*, at p. 4, Pew Internet & American Life Project (July 2009), available at <http://www.pewinternet.org/files/old-media/Files/Reports/2009/Wireless-Internet-Use-With-Topline.pdf>.

⁷⁰ *U.S. Smartphone Use in 2015; Home Broadband 2015*.

⁷¹ *U.S. Smartphone Use in 2015* at p. 15-16.

⁷² *Id.* at p. 5.

⁷³ See, e.g., Nicol Turner-Lee et al., *Minorities, Mobile Broadband and the Management of Chronic Diseases*, Joint Center for Political & Economic Studies (April 2012), available at http://jointcenter.org/sites/default/files/Minorities%20Mobile%20Broadband%20and%20the%20Management%20of%20Chronic%20Diseases_0.pdf (hereinafter “*Mobile Broadband and the Management of Chronic Diseases*”); Kristal Lauren High, *Blueprint for Universal Economic Inclusion: Streamlining Pipelines to Prosperity in the Digital Age*, Politic365 (2015), available at <http://politic365.uberflip.com/i/595794-2015-politic365-blueprint-report/>.

because of this near-boundless freedom to experiment with networks and product offerings.⁷⁴ Although recent changes to the regulatory regime by the FCC might ultimately reverse or undermine these gains, the prevailing dynamic has been, and continues to be, vibrant business model experimentation.⁷⁵ The rise of free data provides yet another example of firms in the sector experimenting with new ways of serving customers.

Free data, as currently structured, highlights several notable features that, over time, could become part of the foundation of mobile offerings going forward. These programs have been voluntary from the start – depending on the service provider, subscribers are free to either opt in or opt out at any time. This builds on the modularity inherent in the modern wireless sector, where users have significant freedom to customize their user experience by, for example, picking and choosing which apps to install, which handset to purchase, which network to use, and which service option best matches their data needs. Free data programs are also open to any content provider that meets certain technical criteria set by the service provider, an approach that is similar, in many respects, to how companies such as Apple and Google manage their app stores.

The adoption of these kinds of practices by service providers reflects the interconnected nature of the mobile broadband ecosystem, where firms of all kinds – network owners, content producers, and device manufacturers – compete vigorously for the attention and dollars of users. Refraining from interfering with the provision of offerings like free data would signal to the ecosystem that, absent blatantly anti-consumer and anti-competitive action, this ever-changing space will remain free to continue tinkering with every aspect of the mobile consumer experience. Moreover, service providers must endeavor to fairly include multicultural content in categorical free data offerings.

D. Impacts on Innovation in the Mobile Ecosystem

The vast majority of content provided via free data programs is entertainment-related, with streaming video and music being the most prevalent. As discussed above, this makes sense because this content is increasingly popular among mobile customers; carriers are ultimately just responding to these demands by developing new service offerings that support these uses. Over time, though, these programs might grow to encompass critical uses such as the monitoring of personal health metrics, energy consumption, smart car information, smart city apps, and other real-time services. Gauging interest in free data now and experimenting with different program elements could very well lay the groundwork for further exploration of how best to structure these arguably more important offerings.

⁷⁴ See, e.g., *U.S. Telecom v. FCC*, Amicus Brief of MMTC, at p. 12-13, No. 15-1063 (D.C. Cir.) (filed Aug. 6, 2015), available at <https://www.ustelecom.org/sites/default/files/documents/15-1063%20MMTC%20Amicus%20Brief%20080615.pdf>.

⁷⁵ *Id.*

These kinds of services are not purely hypothetical. To the contrary, numerous federal entities – including the FCC,⁷⁶ FTC,⁷⁷ FDA,⁷⁸ and the Departments of Energy,⁷⁹ Education,⁸⁰ and Transportation,⁸¹ among many others – have been exploring the benefits and challenges associated with the emerging array of wireless-enabled smart services and applications for the last few years. It is widely acknowledged that these services hold significant promise and that the data generated from using them will add significantly to the torrent of data currently consumed by users in the form of streaming media.⁸² Providing individuals with the opportunity to consume some of these real-time services under a free data program could encourage use and spur further investment and innovation in what many see as transformational services for communities of color in particular. For example, zero-rating certain health-related mobile tools could prove enormously beneficial for African Americans, who, as a group, are more likely to develop chronic diseases such as diabetes and heart disease. Left unaddressed, these kinds of ailments incur significant healthcare costs. But when treated in a preventative and real-time manner, there is evidence to suggest that health outcomes in these communities improve while also helping to realize cost-savings for patients and healthcare providers alike.⁸³ These benefits inure not just to communities of color but to everyone.

Even as more robust networks like 5G are deployed, the inherent capacity constraints of mobile networks will persist – that is simply the nature of spectrum and the underlying physical components of mobile broadband infrastructure. At the same time, innovation in the emerging “Internet of things” will continue forward and will revolve primarily around mobile services, exponentially increasing the strain on wireless networks but also providing consumers with a growing number of choices for receiving critical, time-sensitive, and life-enhancing services. As such, the free data business model appears poised to play a key role in mobile broadband use over the long-term. Allowing for continued experimentation could hasten the development of additional innovative offerings that go far beyond streaming media.

⁷⁶ See, e.g., *National Broadband Plan*.

⁷⁷ See, e.g., *Internet of Things: Privacy and Security in a Connected World*, FTC Staff Report (June 2015), available at <https://www.ftc.gov/system/files/documents/reports/federal-trade-commission-staff-report-november-2013-workshop-entitled-internet-things-privacy/150127iotrpt.pdf>.

⁷⁸ See, e.g., *Mobile Medical Applications: Guidance for Industry and FDA Staff*, FDA (Feb. 9, 2015), available at <http://www.fda.gov/downloads/MedicalDevices/.../UCM263366.pdf>.

⁷⁹ See, e.g., *2014 Smart Grid System Report*, U.S. Dept. of Energy (Aug. 2014), available at <http://energy.gov/sites/prod/files/2014/08/f18/SmartGrid-SystemReport2014.pdf>.

⁸⁰ See, e.g., *2016 National Education Technology Plan*, U.S. Dept. of Education (Dec. 2015), available at <http://tech.ed.gov/files/2015/12/NETP16.pdf>.

⁸¹ See, e.g., *Beyond Traffic 2045: Trends and Choices*, U.S. Dept. of Transportation (Feb. 2015), available at https://cms.dot.gov/sites/dot.gov/files/docs/Draft_Beyond_Traffic_Framework.pdf.

⁸² See, e.g., Charles McLellan, *The Internet of Things and Big Data: Unlocking the Power*, March 2, 2015, ZDNet, available at <http://www.zdnet.com/article/the-internet-of-things-and-big-data-unlocking-the-power/>.

⁸³ See, e.g., *Mobile Broadband and the Management of Chronic Diseases*.

E. Impacts on Consumer Empowerment

The emergence of free data is part of the ongoing evolution of the broader wireless space. The sector as a whole has a long history of individual providers constantly adjusting offerings in an effort to outdo competitors. The typical pattern involves a single provider making a significant alteration to the “status quo” and other providers responding by innovating further. This dynamic has been evident in many of the modifications made to prevailing pricing structures and service features in recent years.⁸⁴ Along with the shift toward more individualized pricing that was discussed above, consumers now have a distinct set of offerings from many of the competing mobile service providers available to them.

This overall trend toward greater consumer empowerment, of which free data is the most recent example, benefits all consumers in many ways – but for communities of color and low-income households, these benefits are especially impactful given their above-average use of mobile broadband. To date, there has been great reluctance on the part of regulators to intervene or otherwise attempt to alter this organic evolution. Such restraint should continue lest unnecessary meddling undermines this promising dynamic.

IV. CONCLUSION

As policymakers, innovators, and other stakeholders continue to discuss and debate the proper level of regulation in the modern mobile broadband ecosystem, they should not lose sight of the fact that, by and large, consumers are reaping the benefits of intense competition among network, device, and content providers. Free data, a common business practice that has quickly diffused across the mobile broadband space, is a prominent feature of such heightened competition. It is a symptom of a hyper-innovative space, not an invasion of an Open Internet. The digital elite can afford to intellectualize the value of free data, but for communities of color it can mean an affordable digital connection to the future. This is even more true for small, multicultural businesses that rely on mobile connections to reach their audiences.

The increasing prevalence and significant popularity of free data also underscores the critical role that mobile broadband plays in ensuring that people of color and low-income consumers have a viable on-ramp to the Internet. Wireless connectivity is preferred in these communities, and free data delivers to them additional benefits in the form of lower bills and additional data to use on more meaningful activities. Similarly, free data holds enormous promise in the ongoing struggle to close the digital divide and ensure that as many people as possible are online and using the Internet to improve their lives. Free data can and should play a key role in finally making progress toward universal first-class digital citizenship for every American.

⁸⁴ See, e.g., Daniel Kline, *Are Smartphone Subsidies a Thing of the Past?*, Aug. 19, 2015, The Motley Fool, available at <http://www.fool.com/investing/general/2015/08/19/are-smartphone-subsidies-a-thing-of-the-past.aspx> (discussing recent shifts away from carrier subsidization of wireless handsets).

FRED UPTON, MICHIGAN
CHAIRMAN

FRANK PALLONE, JR., NEW JERSEY
RANKING MEMBER

ONE HUNDRED FOURTEENTH CONGRESS
Congress of the United States
House of Representatives
COMMITTEE ON ENERGY AND COMMERCE
2125 RAYBURN HOUSE OFFICE BUILDING
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Majority (202) 225-2927
Minority (202) 225-3641

August 25, 2016

The Honorable Tom Wheeler
Chairman
Federal Communications Commission
445 12th Street, N.W.
Washington, DC 20024

Dear Chairman Wheeler:

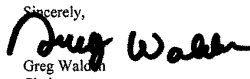
Thank you for appearing before the Subcommittee on Communications and Technology on Tuesday, July 12, 2016, to testify at the hearing entitled "Oversight of the Federal Communications Commission."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

Also attached are Member requests made during the hearing. The format of your responses to these requests should follow the same format as your responses to the additional questions for the record.

To facilitate the printing of the hearing record, please respond to these questions and requests with a transmittal letter by the close of business on September 8, 2016. Your responses should be mailed to Greg Watson, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to Greg.Watson@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,

Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: Anna G. Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachments

[Mr. Wheeler's responses have been retained in committee files and also are available at <http://docs.house.gov/Committee/Calendar/ByEvent.aspx?EventID=105179>.]

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CHAIRMAN

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August 25, 2016

The Honorable Mignon Clyburn
Commissioner
Federal Communications Commission
445 12th Street, N.W.
Washington, DC 20024

Dear Commissioner Clyburn:

Thank you for appearing before the Subcommittee on Communications and Technology on Tuesday, July 12, 2016, to testify at the hearing entitled "Oversight of the Federal Communications Commission."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

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Sincerely,



Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: Anna G. Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachment

**FCC Commissioner Mignon L. Clyburn
Response to Additional Questions for the Record
July 12, 2016 Hearing before the Subcommittee on Communications and Technology
“Oversight of the Federal Communications Commission”**

The Honorable Pete Olson

1. According to a Pew Center study on the state of news media this year, from 2004-2014, more than 100 daily newspapers across the country shut down completely. And that statistic doesn't include Texas newspapers like the Houston Post, the San Antonio Light and the Dallas Times Herald which were all shuttered previous to 2004. And yet the FCC's media ownership rules, which maybe coincidentally have not been updated in over a decade, still reflect a local media landscape that predates smart phones, broadband, the iTunes music store and the existence of the Houston Texans NFL franchise.
 - a. Congress has mandated that every four years the FCC study the media ownership rules and get rid of the ones that are no longer necessary because of competition. It seems to me that one of the easiest to finally do away with, which also happens to be a rule that previous FCC chairmen have said is no longer needed, is the ban on newspapers being owned by a television station in the same local market. I think everyone here can agree that certain economies of scale, like shared office space and advertising staffing, can be gained by allowing a local broadcaster and a local newspaper to be owned by the same company. But the Commission's latest Media Ownership review outline still retains this outdated and unnecessary ban. Will the FCC finally agree to move on from this outdated ban and repeal the newspapers/broadcaster cross-ownership ban as part of the current ownership review?

Thank you for the question, Congressman Olson. On August 10th, the Commission adopted a Report and Order which concluded the Commission's 2010 and 2014 Quadrennial Review proceedings. As I stated in voting to approve the Order, as the former publisher and general manager of a small Charleston-based weekly newspaper for 14 years, I am very much aware that the newspaper business is not what it used to be. Nationally, the number of daily newspapers over the past 40 years has decreased by nearly 25 percent. Circulation has fallen from 60.7 million in 1975 to 40.4 million in 2014. To address the concern of a failed or failing newspaper or broadcast station market and the impact on the local media landscape, the Commission adopted an exception to its newspaper/broadcast cross-ownership rule that can prevent these voices from vanishing by allowing for an injection of new investment capital into the particular news outlet.

2. Shouldn't the FCC adopt broadband privacy rules that are consistent with the FTC's privacy framework and the Administration's 2012 Privacy Report and Consumer Privacy Bill of Rights -i.e., a technology-neutral approach that applies consistent rules based on the type of data and how it's being used, and

requires opt-in consent solely for the use and disclosure of sensitive information such as financial, health, and children's data, as the FTC has determined -rather than pursue the radical departure from this highly successful approach that the FCC's NPRM is proposing, especially since this departure would deprive consumers of innovative and lower-priced offerings that they routinely receive today, block ISPs from bringing new competition to the highly concentrated online advertising market, and provide substantial ammunition to those seeking to legally challenge and dismantle the recently approved EU-US Privacy Shield by calling into question the adequacy of the FTC's privacy framework which is a key component of this important international agreement?

When it comes to protecting consumer privacy, transparency, notice, choice, and security are principles I believe we can all agree upon. Those principles have been the basis of the FTC's approach to privacy, and the Administration's approach to privacy. They were part of the NPRM's approach to privacy, and should underpin the approach taken in whatever Order the Commission adopts.

- 3. I want to ask you about the new broadcast standard -Next Generation Television – which the NAB and the Consumer Technology Association submitted to the FCC for approval in April. This new optional standard has the potential to bring new benefits to consumers and will help broadcasters retain their important role in providing local news and additional services to viewers. Can you comment on this new standard and give us a sense of when the FCC will issue a proposed rule on adoption of this innovative optional new technology?**

The petition is currently before the Commission's Media Bureau. When it reaches the full Commission, I will be looking at what ATSC 3.0 can do, to lead to greater diversity on the public airwaves. By some accounts, today's six megahertz broadcast channel, could be used to distribute as many as six to eight separate high-definition channels. This could lead to new voices in the market, or provide an option for the many LPTV stations I have met with, who are concerned about their future in broadcasting. I look forward to continuing to learn more about the ATSC 3.0 standard from stakeholders, and the opportunities it may present to fulfill my goal of greater viewpoint diversity.

The Honorable Mike Pompeo

- 1. The White House released a privacy report in 2012 which endorsed a "level playing field for companies and a consistent set of expectations for consumers." Also, the FTC explained in its 2012 Privacy Guidelines that "any privacy framework should be technology neutral" and noted that ISPs are just one type of large platform provider.**

- a. Do you believe consumers' expect the same information**

about their online activity to be subject to different privacy rules depending upon the type of entity collecting their information online?

Consumers expect that regardless of who is collecting their information, that they will receive transparent notice and choice, and that their information will be protected regardless of who is collecting or using their information. The Commission's proposal does exactly that. Moreover, the Commission proposed a framework that is technology neutral—the same privacy protections apply regardless of the underlying network technology in use by the broadband provider. I would support adoption of a framework that protects consumers and does not discriminate based on the underlying broadband technology used by the broadband provider.

- 2. Student loan debt continues to be a major problem for many Americans, with default rates climbing up each year. Services of federal student loan debt are legally obligated, by their contracts with the Department of Education, to reach out multiple times to borrowers to help them understand all of their options as they face their obligation to repay debts. Yet, at the same time you have the TCPA, which holds those same companies strictly liable when they in good faith call a borrower who has consented to that outreach but the borrower has changed his/her number and so the call goes to someone who now answers to that reassigned number. On July 5, the FCC released its Declaratory Ruling in which you said, "we clarify that the TCPA does not apply to calls made by or on behalf of the federal government in the conduct of official government business, except when a call made by a contractor does not comply with the government's instructions."**

- a. Is it your opinion that student loan servicers, while following their legal obligations in their contracts with the Department of Education, should be exempt from TCPA? Yes or no; and if no, why?**

As you know, the *Bipartisan Budget Act of 2015* gave the Commission very specific instructions regarding robocalls "made solely to collect a debt owed to or guaranteed by the United States." The provision which directly modifies the TCPA, resulted in the Commission's adoption of an August Order setting a limit of three robocalls per month, with explicit flexibility given to federal agencies to request a waiver seeking higher volume limits if needed. It should also be noted that this Order included debt servicers who contract with the government in the statutory exemption from the TCPA's consent requirement. This was requested by servicers and reflects the view that these calls can benefit consumers.

The Honorable Billy Long

- 1. It is clear that the TCPA, which became law in 1991, is sorely out of date and in need of modernization. In your opinion, what parts of this existing law should**

Congress update?

During the 25 years since Congress passed the Telephone Consumer Protection Act (TCPA), mobile phone subscriptions have increased by 3,567 percent. Similarly, today, nearly half of U.S. households report having only wireless telephone service. Given consumers' increasing reliance on mobile devices, I believe it would be appropriate, should Congress choose to update the TCPA, to look at how the rules should be applied to mobile voice calls and text messages.

Additionally, I believe it may be appropriate to examine whether changes in statute would make it easier for the Commission to identify violators of the TCPA and stop the increasing number of unwanted robocalls.

The Honorable Bobby Rush

- 1. I understand and appreciate the Commission's desire for strong consumer protection standards, including a broad definition of personally identifiable information, but do you have any concerns about second and third order unintended effects on things that help consumers such as Caller ID or the protections provided by the Telephone Consumer Protection Act? If so, what, if anything, is being done to mitigate these effects?**

The Commission is taking a careful and thoughtful approach to privacy, including any potential interplay between section 222 and other provisions of the Act, such as the sections 225 (Telephone Consumer Protection Act) and 227 (Truth in Caller ID Act). In conducting this rulemaking, the Commission must read section 222 in the context of other Congressional mandates and the public interest. For example, the Commission's Caller ID rules reflect a careful balancing of a caller's need for privacy of a call by allowing them to not transmit their caller ID, with the information needs of a called party by allowing them to choose not to receive calls without caller ID information. A similarly attentive approach will be required here to ensure that the consumer protections provided by other statutory provisions are retained in the event that the Commission adopts rules regarding broadband privacy.

The Honorable G.K. Butterfield

- 1. Commissioners, for the rural areas that require more broadband infrastructure investment, do you see any dangers if the Commission's final rule on Business Data Services (special access) fails to fully recognize the real cost to provide fiber and other BDS services?**

Thank you for the question, Congressman. It highlights the importance of getting this right. On one hand, the Commission has been presented with arguments that the lack of BDS reform has cost our economy \$150 billion over the past five years. On the other, are arguments that *any* reduction in BDS revenues would cost jobs and investment in broadband. The gravity of striking the right balance is not lost on me. We want to ensure that investment and innovation

continue and that consumers are not subject to BDS pricing that is born out of market power. This will serve as a guide post in evaluating whatever Order the Chairman ultimately circulates.

2. If the order overshoots the mark, what could it do to rural economic development, jobs, and anchor institutions if BDS providers can't make the investment to provide service?

The Commission has been presented with arguments that the lack of BDS reform has cost our economy \$150 billion over the past five years. If that is correct, rural economic development may already be depressed by high BDS prices, and BDS reform would be a boon for economic development in those areas. But, your question highlights the importance of getting BDS reform right.

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Minority (202) 225-3041

August 25, 2016

The Honorable Jessica Rosenworcel
Commissioner
Federal Communications Commission
445 12th Street, N.W.
Washington, DC 20024

Dear Commissioner Rosenworcel:

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Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,



Greg Walden
Chairman
Subcommittee on Communications and Technology

cc: Anna G. Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachment

House Energy and Commerce Subcommittee on Communications and Technology
 "Oversight of the Federal Communications Commission"
 July 12, 2016

Commissioner Jessica Rosenworcel
 Responses to Questions for the Record
 Submitted September 8, 2016

The Honorable Pete Olson

1. According to a Pew Center study on the state of news media this year, from 2004-2014, more than 100 daily newspapers across the country shut down completely. And that statistic doesn't include Texas newspapers like the Houston Post, the San Antonio Light and the Dallas Times Herald which were all shuttered previous to 2004. And yet the FCC's media ownership rules, which maybe coincidentally have not been updated in over a decade, still reflect a local media landscape that predates smart phones, broadband, the iTunes music store and the existence of the Houston Texans NFL franchise.

a. Congress has mandated that every four years the FCC study the media ownership rules and get rid of the ones that are no longer necessary because of competition. It seems to me that one of the easiest to finally do away with, which also happens to be a rule that previous FCC chairmen have said is no longer needed, is the ban on newspapers being owned by a television station in the same local market. I think everyone here can agree that certain economies of scale, like shared office space and advertising staffing, can be gained by allowing a local broadcaster and a local newspaper to be owned by the same company. But the Commission's latest Media Ownership review outline still retains this outdated and unnecessary ban. Will the FCC finally agree to move on from this outdated ban and repeal the newspapers/broadcaster cross-ownership ban as part of the current ownership review?

After careful consideration of the record, the FCC concluded in its August 10, 2016 Quadrennial Review Order that regulation of newspaper/broadcast cross-ownership within a local market remains necessary to protect and promote viewpoint diversity. At the same time, however, the FCC determined that an absolute ban on newspaper/broadcast cross-ownership would be overly broad and unnecessarily restrictive. To this end, the Quadrennial Review Order provided for a loosening of the ban on cross-ownership in three ways. First, the FCC adjusted the geographic scope of its existing rule in order to update old analog parameters to more accurately reflect the markets that newspapers and broadcasters actually serve. Second, in recognition of the fact that a proposed merger involving a failed or failing entity does not present a significant risk to viewpoint diversity, the FCC adopted an explicit exception to the newspaper-broadcast cross-ownership rule for proposed mergers involving a failed or failing broadcast station or newspaper. Third, the Quadrennial Review Order provided a

path forward for waivers of the newspaper/broadcast cross-ownership rule on a case-by-case basis, provided that applicants can show that the proposed merger will not unduly harm viewpoint diversity in the market.

2. Shouldn't the FCC adopt broadband privacy rules that are consistent with the FTC's privacy framework and the Administration's 2012 Privacy Report and Consumer Privacy Bill of Rights – i.e., a technology neutral approach that applies consistent rules based on the type of data and how it's used, and requires opt-in consent solely for the use and disclosure of sensitive information such as financial, health and children's data, as the FTC has determined – rather than pursue the radical departure from this highly successful approach that the FCC's NPRM is proposing, especially since this departure would deprive consumers of innovative and lower-priced offerings that they routinely receive today, block ISPs from bringing new competition to the highly concentrated online advertising market, and provide substantial ammunition to those seeking to legally challenge and dismantle the recently approved EU-US Privacy Shield by calling into question the adequacy of the FTC's privacy framework which is a key component of this important international agreement?

In our ongoing privacy proceeding, I believe the FCC should strive to identify how consumers can better understand the way their data is collected, what rules apply, and how they can protect themselves under the law. I believe doing this well requires harmonization—to the extent possible under existing law—with other federal authorities with privacy interests. To this end, the staff of the FTC Bureau of Consumer Protection filed comments in our privacy docket. The FCC needs to study this filing carefully and seek to incorporate their ideas to the extent feasible under our governing statute.

3. I want to ask about the new broadcast standard - Next Generation Television - which the NAB and the Consumer Technology Association submitted to the FCC for approval in April. This new optional standard has the potential to bring new benefits to consumers and will help broadcasters retain their important role in providing local news and additional services to viewers. Can you comment on this new standard and give us a sense of when the FCC issue a proposed rule on adoption of this innovative optional new technology?

On April 13, 2016, America's Public Television Stations, AWARN Alliance, Consumer Technology Association, and National Association of Broadcasters filed a Joint Petition for Rulemaking asking the FCC to “amend its rules to allow broadcasters to use the signaling portion of the physical layer of the new ATSC 3.0 (Next Generation TV) broadcast standard, while they continue to deliver current-generation DTV broadcast service to their communities.” It raises a range of issues from the novel technical capabilities of a new broadcasting standard to the complex challenges of transitioning to a standard that is not compatible with existing consumer television sets. The petition was placed on Public Notice by the FCC on April 26, 2016. Comments and reply comments were filed on May 26, 2016 and June 27, 2016,

respectively. The FCC is currently evaluating the record in order to determine the appropriate next steps.

The Honorable Mike Pompeo

1. The White House released a privacy report in 2012 which endorsed a ‘level playing field for companies and a consistent set of expectations for consumers.’ Also, the FTC explained in its 2012 Privacy Guidelines that ‘any privacy framework should be technology neutral’ and noted that ISPs are just one type of large platform provider.

a. Do you believe consumers’ expect the same information about their online activity to be subject to different privacy rules depending upon the type of entity collecting their information online?

In the broadband age, consumers should not have to be network engineers to understand who is collecting their data and they should not have to be lawyers to determine if their information is protected. For this reason, harmonizing FCC policies with other federal authorities with responsibilities for privacy is a responsible course of action. At the same time, however, different federal actors are responsible for implementing different federal privacy statutes. Consequently, it may not always be possible to ensure that privacy policies are the same in every circumstance. Nonetheless, we should strive to simplify the country’s consumer privacy policies and harmonizing them—to the extent reasonable under the law—is a good place to start.

2. Student loan debt continues to be a major problem for many Americans, with default rates climbing up each year. Services of federal student loan debt are legally obligated, by their contracts with the Department of Education, to reach out multiple times to borrowers to help them understand all of their options as they face their obligation to repay debts. Yet, at the same time you have the TCPA, which holds those same companies strictly liable when they in good faith call a borrower who has consented to that outreach but the borrower has changed his/her number and so the call goes to someone who now answers to that reassigned number. On July 5, the FCC released its Declaratory Ruling in which you said, “we clarify that the TCPA does not apply to calls made by or on behalf of the federal government in the conduct of official government business, except when a call made by a contractor does not comply with the government’s instructions.”

a. Is it your opinion that student loan servicers, while following their legal obligations in their contracts with the Department of Education, should be exempt from TCPA? Yes or no; and if no, why?

In the August 2, 2016 Order implementing Section 301 of the 2015 Budget Act, the FCC determined that while “calls by the federal government and its agents are excepted from the prior-express-consent requirement of section 227(b)(1),” calls by the federal government and its contractors are subject to limitations on frequency and duration adopted pursuant to section 227(b)(2)(H). As a result, calls made to collect a debt owed

to or guaranteed by the United States are exempt from the prior express consent requirement of the Telephone Consumer Protection Act, but are still subject to restrictions that the law authorizes the FCC to place on such calls. In the Order, the FCC restricted the number of federal debt collection calls to "three calls within thirty days while the delinquency remains or following a specific, time-sensitive event, with such calls also permitted in the 30 days before such an event (but not before delinquency)." However, the Order also provides that federal agencies, such as the Department of Education, "may request a waiver seeking a different limit on the number of autodialed, pre-recorded voice, and artificial-voice calls that may be made without consent of the called party.

The Honorable Billy Long

1. Commissioner Rosenworcel, in your statement in the Video Navigation Choices docket you stated that: "important questions have been raised about copyright, privacy, diversity- and a whole host of other issues in a marketplace that has been tough for competitive providers to crack." Do you think the ditch the box proposal addresses these concerns better than the proposal in the NPRM?

As I have acknowledged previously, there are complex issues that need to be resolved in order for the FCC to successfully proceed with its video navigation proceeding and foster a more competitive consumer set-top box. That is why several alternative proposals that have been filed in this proceeding are under serious consideration. The FCC is still in the process of evaluating these proposals and gathering additional information to better understand how they work, resolve outstanding issues, and comply with the law.

2. *Broadcasting & Cable* of June 20, 2016 includes a story written by John Eggerton, the headline of which was "Rosenworcel: FCC Needs 'Another Way Forward' on SetTops." You were quoted in that article as saying: " ... it has become clear the original proposal has real flaws and as I have suggested before, is too complicated. We need to find another way forward." Does it appear that the "ditch the box"/apps based approach, which is based on an open industry standard available to all, provides a simpler, less complicated approach to achieving the goals of the Navigation Device NPRM?

As I have acknowledged previously, there are complex issues that need to be resolved in order for the FCC to successfully proceed with its video navigation proceeding and foster a more competitive consumer set-top box. That is why several alternative proposals that have been filed in this proceeding are under serious consideration. The FCC is still in the process of evaluating these proposals and gathering additional information to better understand how they work, resolve outstanding issues, and comply with the law.

3. It is clear that the TCPA, which became law in 1991, is sorely out of date and in need of modernization. In your opinion, what parts of this existing law should Congress update?

I agree. When the Telephone Consumer Protection Act was passed 25 years ago, there were less than 10 million cellphone subscriptions in the United States and the smartphone was a concept straight out of science fiction. Today, Americans are cutting the cord in increasing numbers and there are over three hundred million wireless connections in the United States. As a result, I believe it would be helpful to take a fresh look at the way the Telephone Consumer Protection Act treats wired and wireless calls differently. This distinction may have made sense at the time of passage, but it no longer reflects the ways consumers and businesses use communications technology.

Additionally, the Telephone Consumer Protection Act defines “automatic telephone dialing system” as “equipment which has the capacity—(A) to store or produce telephone numbers to be called, using a random or sequential number generator, and (B) to dial such numbers.” This statutory language reflects the state of technology in 1991, not 2016—when this functionality is present in most smartphones. As a result, the application of the statute may now be much broader than Congress intended. Updating this provision to reflect the evolution of technology merits consideration.

The Honorable Kevin Cramer

1. Commissioner Rosenworcel, earlier this year before the Senate Commerce Committee you stated that you would not move forward on how to reform the Universal Service Contribution until after the Court’s make a ruling on the Open Internet Order. Given the Court’s recent decision will you commit, as Chair of the Federal State Joint Board that you will move forward on the Federal State Joint Board’s Recommendation on USF contribution reform before the end of this year?

Now that the DC Circuit has issued its opinion, the Federal-State Joint Board will continue its work with new resolve. Working with my state colleagues, we have set up a schedule for regular staff meetings this Fall, culminating in an in-person discussion in conjunction with the next regular meeting of state utility commissioners later this year. Although it is premature to say when the Recommended Decision will be complete, I can commit that work is underway to advance the referral and that progress will be made by the end of the year.

The Honorable David Loebsack

1. While addressing the nation’s transition to 5G you acknowledged that because 5G ‘signals carry a significant amount of data, they do not go far’ and thus require a network that connects these signals to the rest of the country/world. You also recognized the need for significant build-out referencing the elimination of obstacles in cell tower citing processes to facilitate 5G networks deployment and enable broadband speed offerings that are 10 times faster than today’s 4G services. Likewise, as you are aware, in order to make 5G deployment a reality, BDS will play a critical role in creating the vast web of high-speed backhaul connections necessary for robust 5G coverage and availability throughout the nation.

2. In contrast to today's mobile network which is supported by a macro-cell infrastructure, 5G will require a vast number of small cells, both in urban and rural America. This will require massive investment to deploy fiber-based Ethernet business data services connections to each of these small cells. Yet, at the very moment that the FCC is embarking on policies to accelerate 5G, it is also proposing a new regulatory framework to expand price regulation imposed on providers generally, and particularly in low-density rural areas with few businesses, could impact the economic viability of investment and deployment of new fiber-based Ethernet service.

3. Given the potential implications for high-speed data facility investment and deployment, should the FCC initiate a more comprehensive cost/benefit analysis of its proposed special access rules to better understand its potential impact on investment incentives for high speed fiber and Ethernet service buildout and availability? In determining the cost/benefit of new price regulations, should the agency consider whether it will ultimately advance or inhibit the speed of future 5G deployment and availability throughout the country? Would you support the FCC undertaking a more comprehensive and formal cost/benefit analysis of the recently proposed Business Data Services regulatory framework?

Four years ago, the FCC suspended aspects of its special access policies. The agency determined that its turn-of-the-millennium rules designed to provide greater flexibility for these services were not working as intended. So the FCC set off to update and modernize special access policy. To do so we collected data—lots and lots of data. In fact, we have assembled what might be the single largest dataset in the history of the FCC. In addition, following the issuance of our April 28, 2016 Further Notice, the agency has collected thousands of pages of comment and expert economic analysis to build on an already large public record. As we move forward, it is vitally important that the FCC provides a comprehensive analysis supporting any new regulatory framework that also responds to the economic and legal issues raised in our record.

The Honorable Bobby Rush

1. I understand and appreciate the Commission's desire for strong consumer protection standards, including a broad definition of personally identifiable information, but do you have any concerns about second or third order unintended effects on things that help consumers such as Caller ID or the protections provided by the Telephone Consumer Protection Act? If so, what, if anything is being done to mitigate these effects?

The FCC's March 31, 2016 Notice of Proposed Rulemaking asked over 500 questions in order to identify a path forward to establish consumer privacy protections for broadband Internet access services. In response to this rulemaking, we have a voluminous record. The FCC is combing through the comments that have been submitted and working to develop a way forward. As we do so, I believe we should be mindful of the benefits of harmonizing our policies—to the extent reasonable under existing law—with other federal authorities. As you suggest, we also should consider the consequences that any potential FCC action may have with respect to existing protections for voice telephony.

The Honorable G.K. Butterfield

1. Commissioners, for the rural areas that require more broadband infrastructure investment, do you see any dangers if the Commission's final rule on Business Data Services (special access) fails to fully recognize the real cost to provide fiber and other BDS services?

As we proceed with our review of business data services, the FCC will need to make sure that our policies work across the country. To do so, we will need to take into account many factors, including how we can best encourage deployment of broadband infrastructure in rural areas.

2. If the order overshoots the mark, what could it do to rural economic development, jobs, and anchor institutions if BDS providers can't make the investment to provide service?

As we proceed with our review of business data services, one of the principles that should guide us is that infrastructure matters—and encouraging its deployment is essential. That means any policies we adopt should include incentives for providers to build and invest in networks. If they do not, our policies could yield unintended consequences, particularly in rural areas.

FRED UPTON, MICHIGAN
CHAIRMAN

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August 25, 2016

The Honorable Ajit Pai
Commissioner
Federal Communications Commission
445 12th Street, N.W.
Washington, DC 20024

Dear Commissioner Pai:

Thank you for appearing before the Subcommittee on Communications and Technology on Tuesday, July 12, 2016, to testify at the hearing entitled "Oversight of the Federal Communications Commission."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on September 8, 2016. Your responses should be mailed to Greg Watson, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to Greg.Watson@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,


Greg Walden
Chairman

Subcommittee on Communications and Technology

cc: Anna G. Eshoo, Ranking Member, Subcommittee on Communications and Technology

Attachment

Questions for the Record
from Subcommittee on Communications and Technology Hearing Entitled
“Oversight of the Federal Communications Commission”
July 12, 2016

The Honorable Brett Guthrie

Q1. In your dissenting statement in the Video Navigation Choices proceeding, you stated in the context of the NPRM’s reliance upon “open standards bodies” that “this proposal is likely to produce a stalemate—not a newly competitive market,” and you cited this as the first and foremost problem. Why would reliance upon open standards bodies be such a problem?

A1. The NPRM envisions that open standards bodies including all stakeholders would reach an agreement on consensus standards. But this proceeding has demonstrated that there is a stark divide among those stakeholders. That is why the Downloadable Security Technology Advisory Committee (DSTAC) was unable to rally around a single proposal. And that is why there has been such profound disagreement in the comments responding to the NPRM. Given this history, I do not believe that open standards bodies would be able to produce consensus standards. Rather, I believe that their deliberations would end in stalemate.

The Honorable Pete Olson

Q1. It is not often that you hear from regulators to not expand their jurisdiction. However, you have expressed concern with the ISP privacy NPRM and reiterated that the Federal Trade Commission already regulates ISP privacy and it does it well. Do you think the FTC is the better ISP privacy regulator? Can you elaborate?

A1. Yes, the FTC is a better privacy regulator than the FCC. For the past two decades, the FTC has applied a unified approach to all online actors. It’s shied away from highly prescriptive, industry-wide mandates in favor of a case-specific approach focused on harms to consumers. The FTC’s been quite active, carrying out “more than 150 privacy and data security enforcement actions, including actions against ISPs and against some of the biggest companies in the Internet ecosystem.” And it’s been so successful that the United States government has touted the FTC’s work to the European Union as sufficiently robust to protect online consumers against predatory privacy practices.

In contrast, the FCC is new to the online privacy beat, has no track record, has comparatively limited authority, and has proposed rigid mandates that may freeze some online innovation in place.

Q2. Shouldn’t the FCC adopt broadband privacy rules that are consistent with the FTC’s privacy framework and the Administration’s 2012 Privacy Report and Consumer Privacy Bill of Rights- i.e., a technology-neutral approach that applies consistent rules based on the type of data and how it’s being used, and requires opt-in consent solely for the use and disclosure of sensitive information such as financial, health, and children’s data, as the FTC has determined- rather than pursue the radical departure from this highly successful approach that the FCC’s NPRM is proposing, especially since this departure would deprive consumers of innovative and lower-priced offerings that they routinely receive today, block ISPs from bringing new competition to the highly concentrated online advertising market, and provide substantial ammunition to those seeking to legally challenge and dismantle the recently approved EU-US Privacy Shield by calling into question the adequacy of the FTC’s privacy framework which is a key component of this important international agreement?

A2. Because consumers have a uniform expectation of privacy, I agree with you that the government should adopt a consistent set of privacy regulations in this area.

Q3. I want to ask about the new broadcast standard- Next Generation Television- which the NAB and the Consumer Technology Association submitted to the FCC for approval in April. This new optional standard has the potential to bring new benefits to consumers and will help broadcasters retain their important role in providing local news and additional services to viewers. Can you comment on this new standard and give us a sense of when the FCC will issue a proposed rule on adoption of this innovative optional new technology?

A3. I share your optimism about the ATSC 3.0 next-generation broadcast standard and believe that the Commission should quickly issue an NPRM proposing to give broadcasters the option of adopting this new standard. However, I do not control the Commission's agenda, and I do not know whether and/or when the Commission will move forward on this important issue.

The Honorable Mike Pompeo

Q1. Commissioner Pai, Chairman Nunes and I sent a letter to Chairman Wheeler asking him a series of questions related to his set-top box proposal and cybersecurity. I'd like to ask for your response related to foreign manufacturers and software developers.

Q1a. Under the current NPRM on set top boxes - How will the FCC determine whether a foreign manufacturer or software developer has transferred U.S. consumer, business or government information outside of the U.S.?

A1a. Under the current NPRM, I do not believe that the FCC would be able to determine whether a foreign manufacturer or software developer has transferred U.S. consumer, business, or government information outside of the United States.

Q1b. How will the FCC determine whether such manufacturer or software developer has transferred U.S. consumer, business or government information to another foreign entity?

A1b. Under the current NPRM, I do not believe that the FCC would be able to determine whether a manufacturer or software developer has transferred U.S. consumer, business or government information to another foreign entity.

Q1c. If a foreign manufacturer or software developer has transferred U.S. consumer, business or government information outside of the U.S., what legal recourse would the FCC have to stop the foreign entity from using or sharing the information?

A1c. If a foreign manufacturer or software developer were to transfer U.S. consumer, business, or government information outside of the United States, I do not believe that the FCC would have any legal recourse that would be effective in stopping that foreign entity from using or sharing the information.

Q2. Student loan debt continues to be a major problem for many Americans, with default rates climbing up each year. Services of federal student loan debt are legally obligated, by their contracts with the Department of Education, to reach out multiple times to borrowers to help them understand all of their options as they face their obligation to repay debts. Yet, at the same time you have the TCPA, which holds those same companies strictly liable when they in good faith call a borrower who has consented to that outreach but the borrower has changed his/her number and so the call goes to someone who now answers to that reassigned number. On July 5, the FCC released its Declaratory Ruling in which you said, "we clarify that the TCPA does not apply to calls made by or on behalf of the federal government in the conduct of official government business, except when a call made by a contractor does not comply with the government's instructions."

Is it your opinion that student loan servicers, while following their legal obligations in their contracts with the Department of Education, should be exempt from TCPA? Yes or no; and if no, why?

A2. I parted ways with my colleagues in that July 5 Declaratory Ruling because I think it is clear under federal law that student loan servicers—among other federal contractors—are “persons” subject to the TCPA. Nonetheless, last year’s budget deal included an exemption from the TCPA for calls “made solely to collect a debt owed to . . . the United States,” and I agree that student loan servicers are exempt from the TCPA’s prohibitions because of that exemption.

Q3. The White House released a privacy report in 2012 which endorsed a “level playing field for companies and a consistent set of expectations for consumers.” Also, the FTC explained in its 2012 Privacy Guidelines that “any privacy framework should be technology neutral” and noted that ISPs are just one type of large platform provider.

Do you believe consumers expect the same information about their online activity to be subject to different privacy rules depending upon the type of entity collecting their information online?

A3. No. I can’t put it any better than Chairman Wheeler did, testifying before the House Energy and Commerce Committee’s Subcommittee on Communications and Technology in November 2015: Because consumers deserve “a uniform expectation of privacy,” the FCC should “not be regulating the edge providers differently” from ISPs.

The Honorable Gus Bilirakis

Q1. The TCPA is meant to protect consumers from invasions of personal privacy from unwanted phone calls. Businesses reliant on automated calls seek clarity in knowing their business practices are compliant with the law, and one such proposal would incentivize that independent service provider contracts allow for compliance monitoring programs in order to ensure that their vendors who actually make phone calls to consumers are doing so lawfully at all times. However, there is some concern in the business community that implementing this type of oversight plan to ensure compliance may also open them up to potential liability if something goes wrong.

Do you think that businesses should be penalized for implementing programs with the goal on enhancing compliance under the TCPA? Would you support regulation or legislation permitting businesses to raise an affirmative defense during TCPA-related litigation in order to present evidence of the compliance enhancement programs they have implemented to govern the relationship with their independent, third party vendors?

A1. The law should encourage companies to reduce the number of unwanted robocalls to American consumers. For example, I would support legislation to create a reassigned-numbers database that would enable good-faith callers to determine whether a consumer’s number has changed since that consumer gave prior express consent to receive calls from a company. I also see merit in legislation that would create a safe harbor for telephone companies that seek to reduce the number of fraudulent telemarketing calls received by consumers.

Q2. Can you expand on your testimony that the Set Top Box proposal, as it stands, would have a severe impact for rural Americans? Would there be a noticeable decrease in competitive video options if this went into effect? How can the proposal be modified to mitigate the impact on smaller operators that serve more rural swaths of the country?

A2. The record compiled by the FCC makes clear that the set-top box proposal set forth in the NPRM would impose substantial costs on small video providers that disproportionately serve rural Americans

and that these costs would have a devastating impact on many of these companies. For example, the American Cable Association has told the FCC that the Commission's proposal, if implemented, would cause 200 of its members to stop offering video service or go out of business altogether. And other companies, in order to comply with these rules, would shift money away from rural broadband deployment. For these reasons, to rural Americans, the FCC's proposal would mean fewer video options and less broadband. The best way to avoid this would be for the FCC to abandon the misguided proposal set forth in the NPRM. But if it does not do that, the Commission should at least exempt small video providers from these onerous new regulations.

The Honorable Billy Long

Q1. Commissioner Pai, I would like to get your thoughts in comparing the FCC's existing set-top box proposal with the 'ditch the box' alternative approach that was recently presented to the FCC. The 'ditch the box'/apps approach appears to better reflect consumer preferences in the market and is consistent with the trend of consumers accessing competitive video over apps on a multitude of their devices. Would you agree that in comparison to the consumer apps approach, the FCC's current set-top box proposal will take years longer and cost significantly more to develop and implement? In addition, do you agree that the apps approach will accelerate innovation since it will enable rapid updates by both device manufacturers and Pay-TV providers?

A1. I agree that the set-top box proposal set forth in the Commission's NPRM would take years longer to develop and implement than the consumer apps approach and would also be significantly more expensive. I also agree that the consumer apps approach would be friendlier to innovation than the FCC's proposal.

Q2. It is clear that the TCPA, which became law in 1991, is sorely out of date and in need of modernization. In your opinion, what parts of this existing law should Congress update?

A2. I agree that the TCPA is sorely out of date and in need of modernization. I believe the Anti-Spoofing Act of 2015 would be a good start. I would also support legislation to create a reassigned-numbers database that would enable good-faith callers to determine whether a consumer's number has changed since that consumer gave prior express consent to receive calls from a company. And I see merit in legislation that would create a safe harbor for telephone companies that seek to reduce the number of fraudulent telemarketing calls received by consumers.

The Honorable Anna G. Eshoo

Q1. Please provide me with answers to the following questions regarding your investigation into the Lifeline program.

Q1a. What is the scope of your investigation into the Lifeline program? Please explain how it is not duplicative of the ongoing efforts by the FCC's Enforcement Bureau and the investigation being conducted by the Majority on the House Energy and Commerce Committee.

A1a. I commenced my investigation on the potentially dubious practices of Lifeline wireless resellers on April 18, 2016 in light of the Commission's investigation of Total Call Mobile. As I wrote in my first letter to the Universal Service Administrative Company, we learned how Total Call Mobile's sales agents repeatedly registered duplicate subscribers to the addresses of local homeless shelters and used fake Social Security numbers to register duplicate subscribers—all resulting in USAC's finding 32,498 enrolled duplicates. We learned how Total Call Mobile's sales agents repeatedly overrode the safeguards or the National Lifeline Accountability Database (NLAD)—abuse so far-reaching that at one point,

99.8% of Total Call Mobile's new subscribers were the result of overrides. We learned how Total Call Mobile heavily relied on Supplemental Nutrition Assistance Program (SNAP) cards to register subscribers—in large part because that program can so easily be abused. And we learned that Total Call Mobile was not alone: Its sales agents testified that they worked side-by-side with the sales agents of other Lifeline wireless resellers and that they learned how to exploit the program from sales agents and supervisors who worked at various points for still other Lifeline wireless resellers.

From the outset of my investigation, I have followed the evidence where it has led. For example, I've refined my investigation to target companies with seemingly anomalous results in the data and to examine rules and processes that appeared to invite exploitation. I have been coordinating my efforts with the FCC's Enforcement Bureau and the FCC's Office of the Inspector General, and they have assured me they would take the evidence I have uncovered into account as they pursue their independent investigations. My staff has also briefed the Majority on the House Energy and Commerce Committee on my office's investigation, per their request.

Q1b. How much in taxpayer resources have you spent on this investigation to date?

A1b. Commission staff has informed my office that to date, we have spent \$3.76 in postage to carry out this investigation.

Q1c. When do you expect to conclude your investigation?

A1c. I have not established any particular timeline.

The Honorable Bobby Rush

Q1. I understand and appreciate the Commission's desire for strong consumer protection standards, including a broad definition of personally identifiable information, but do you have any concerns about second and third order unintended effects on things that help consumers such as Caller ID or the protections provided by the Telephone Consumer Protection Act? If so, what, if anything, is being done to mitigate these effects?

A1. I agree that the Commission's proposed definition of personally identifiable information is extremely broad in the privacy rulemaking and that restricting the use of all such information may in fact hurt consumers rather than help them. That is one of the reasons I dissented from the Commission's proposal. My colleagues who voted for the Commission's proposal would be in a better position than I to explain what, if anything, is being done to mitigate these effects.

The Honorable G.K. Butterfield

Q1. Commissioners, for the rural areas that require more broadband infrastructure investment, do you see any dangers if the Commission's final rule on Business Data Services (special access) fails to fully recognize the real cost to provide fiber and other BDS services?

A1. Failing to recognize the true costs of providing special access services in rural America would likely lead the Commission to adopt rate caps in such areas that are below cost. Recent economic analyses by a variety of parties have shown that the assumptions in the original proposal do not reflect the actual cost of serving rural America.

Q2. If the order overshoots the mark, what could it do to rural economic development, jobs, and anchor institutions if BDS providers can't make the investment to provide service?

A2. If the Commission sets rates below costs in rural America, that will dampen investment by incumbent carriers in rural America and drive out their competitors entirely. That means less deployment

and fewer jobs. That means economic stagnation, not growth. And that means slower speeds for anchor institutions, mobile data networks, and consumers.

FRED UPTON, MICHIGAN
CHAIRMAN

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August 25, 2016

The Honorable Michael O'Rielly
Commissioner
Federal Communications Commission
445 12th Street, N.W.
Washington, DC 20024

Dear Commissioner O'Rielly:

Thank you for appearing before the Subcommittee on Communications and Technology on Tuesday, July 12, 2016, to testify at the hearing entitled "Oversight of the Federal Communications Commission."

Pursuant to the Rules of the Committee on Energy and Commerce, the hearing record remains open for ten business days to permit Members to submit additional questions for the record, which are attached. The format of your responses to these questions should be as follows: (1) the name of the Member whose question you are addressing, (2) the complete text of the question you are addressing in bold, and (3) your answer to that question in plain text.

To facilitate the printing of the hearing record, please respond to these questions with a transmittal letter by the close of business on September 8, 2016. Your responses should be mailed to Greg Watson, Legislative Clerk, Committee on Energy and Commerce, 2125 Rayburn House Office Building, Washington, DC 20515 and e-mailed in Word format to Greg.Watson@mail.house.gov.

Thank you again for your time and effort preparing and delivering testimony before the Subcommittee.

Sincerely,


Greg Walden
Chairman

Subcommittee on Communications and Technology

cc: Anna G. Eshoo, Ranking Member, Subcommittee on Communications and Technology



Mike O'Rielly
Commissioner

FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON

September 8, 2016

Via U.S. Mail and Email

Mr. Greg Watson
Legislative Clerk
Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Re: Questions for the Record
July 12, 2016 Hearing before the House Energy and Commerce
Subcommittee on Communications and Technology
"Oversight Hearing of the Federal Communications Commission"

Dear Mr. Watson:

Please find enclosed my responses to the questions for the record in connection with my testimony at the July 12, 2016 hearing entitled "Oversight of the Federal Communications Commission."

A copy of this letter and responses are also being sent to you today via email at Greg.Watson@mail.house.gov.

Thank you and please do not hesitate to contact me if you should have any questions.

Sincerely,

Michael O'Rielly
Commissioner

A handwritten signature in dark ink, appearing to be "M. O'Rielly", written over a black rectangular redaction box.

Enclosure
cc w/enc: Greg.Watson@mail.house.gov

Attachment — Additional Questions for the Record

The Honorable Brett Guthrie

In your dissenting statement in the Video Navigation Choices proceeding, you stated that “the statutory authority on which this fantasy rests is equally far-fetched.”

1. Is the statutory authority you were referring to section 629 of the *Communications Act*?

Yes.

- a. When was section 629 added to the *Communications Act*?

It was enacted as part of the Telecommunications Act of 1996 (P.L. 104-104).

2. Section 203 of H.R. 1555 as introduced on May 3, 1995, was entitled “competitive availability of navigation devices.” Was section 203 competitive availability of navigation devices included in the final bill that passed the House on August 4, 1995?

No, not as originally drafted. A similar, but less extensive, version was adopted as part of the final bill that became law.

- a. Did the Conference Agreement with respect to competitive availability of navigation devices indicate that “The conference agreement adopts the House provision...”?

Yes, but it states that such adoption occurred “with modifications” to the House provision.

- b. Was the sponsor of H.R. 1555 and House Floor Manager for that bill then-Chairman of the House Commerce Committee Tom Bliley from Virginia, and was Chairman Bliley also the leading advocate for the adoption of the competitive availability of navigation devices provision that ultimately became section 629?

Yes.

- c. For whom did you work in the time period from May 3, 1995, until President Clinton signed the *Telecommunications Act of 1996* into law on February 8, 1996?

I was employed by the House Commerce Committee, the name by which the House Energy and Commerce Committee was referred to at the time, led by then-Chairman Bliley.

3. To what extent does your knowledge of the legislative history of section 629 and Chairman Bliley's intent contribute to your conclusion that "the statutory authority on which this fantasy rests is equally far-fetched"?

My views on the statutory provision are based on the reading of the language itself. It is my belief that the Notice of Proposed Rulemaking, as approved by the Commission, exceeds the statutory authority provided the Commission. In particular, its reach to cover non-device or non-equipment "set top boxes" is beyond what Congress authorized. These views, however, are also supported by my experience working for then-Chairman Bliley, my knowledge of the compromises that were made to facilitate the enactment of the Telecommunications Act of 1996, and my understanding of the context and make-up on the House of Representatives at that time.

The Honorable Pete Olson

1. It is not often that you hear from regulators to not expand their jurisdiction. However, both of you have expressed concern with the ISP privacy NPRM and reiterated that the Federal Trade Commission already regulates ISP privacy and it does it well.

- a. Do you think the FTC is the better ISP privacy regulator? Can you elaborate?

While use of the word "better" is a relative term, the FTC has far more experience and resources dedicated to the issue of privacy than the FCC. The FTC, through decades of involvement, is capable of considering the complex issues that arise when considering privacy in general or broadband privacy, more specifically. Although I may not agree on each and every decision that it makes, it is my belief that the FTC has properly earned its reputation, subject to change, as a thoughtful but appropriately forceful regulator on the issue of privacy.

2. Shouldn't the FCC adopt broadband privacy rules that are consistent with the FTC's privacy framework and the Administration's 2012 Privacy Report and Consumer Privacy Bill of Rights – i.e., a technology-neutral approach that applies consistent rules based on the type of data and how it's being used, and requires opt-in consent solely for the use and disclosure of sensitive information such as financial, health, and children's data, as the FTC has determined – rather than pursue the radical departure from this highly successful approach that the FCC's NPRM is proposing, especially since this departure would deprive consumers of innovative and lower-priced offerings that they routinely receive today, block ISPs from bringing new competition to the highly concentrated online advertising market, and provide substantial ammunition to those seeking to legally challenge and dismantle the recently approved EU-US Privacy Shield by calling into question the adequacy of the FTC's privacy framework which is a key component of this important international agreement?

If the FCC is going to adopt broadband-specific privacy regulations, I agree that – for the reasons you outline and others – such regulations should be consistent with the approach and structure used by the FTC.

3. I want to ask about the new broadcast standard – Next Generation Television – which the NAB and the Consumer Technology Association submitted to the FCC for approval in April. This new optional standard has the potential to bring new benefits to consumers and will help broadcasters retain their important role in providing local news and additional services to viewers. Can you comment on this new standard and give us a sense of when the FCC will issue a proposed rule on adoption of this innovative optional new technology?

Chairman Wheeler is best positioned to answer the timing portion of your question, although I hope Commission consideration is not unnecessarily delayed. In my preliminary review, there is a lot to like with the new ATSC 3.0 set of standards, even though a good portion of them are still being decided. I would prefer that the Commission take an approach that eliminates barriers to any new standard, rather than seek to endorse one particular standard or set of standards. The television industry would benefit from a structure whereby a broadcaster can upgrade its delivery standard as it sees fit, similar to how the wireless industry does for its delivery standards, rather than require Commission action each time technology changes.

The Honorable Mike Pompeo

1. Commissioner O’Rielly, Chairman Nunes and I sent a letter to Chairman Wheeler asking him a series of questions related to his set-top box proposal and cybersecurity. I’d like to ask for your response related to foreign manufacturers and software developers.

- a. Under the current NPRM on set top boxes - How will the FCC determine whether a foreign manufacturer or software developer has transferred U.S. consumer, business or government information outside of the U.S.?

In reading the text of the NPRM, which I did not support, it is unclear how the Commission would be able to do so.

- b. How will the FCC determine whether such manufacturer or software developer has transferred U.S. consumer, business or government information to another foreign entity?

I do not know of any mechanism available to the Commission to monitor or prevent such information transfer.

- c. If a foreign manufacturer or software developer has transferred U.S. consumer, business or government information outside of the U.S., what legal recourse would the FCC have to stop the foreign entity from using or sharing the information?

Similarly, I do not know of any mechanism available to the Commission to stop a foreign entity from using or sharing such information.

2. Commissioner O’Rielly, to accommodate concerns of programmers, Chairman Wheeler has said that he would allow pay-TV providers to cut off content to consumer electronics and application providers that do not abide by certain conditions. That might stem further injury.

- a. But the FCC would not be able to award damages to programmers to compensate them for the harm that has already occurred, correct?

Correct.

- b. And while in some cases the FCC can assess fines that go to the Treasury, the FCC would not have jurisdiction over consumer electronics and application providers to assess even fines here, right?

Depending on the provider and the practices in question, the Commission may have limited jurisdiction to enact any penalty.

3. The White House released a privacy report in 2012 which endorsed a “level playing field for companies and a consistent set of expectations for consumers.” Also, the FTC explained in its 2012 Privacy Guidelines that “any privacy framework should be technology neutral” and noted that ISPs are just one type of large platform provider.

- a. Do you believe consumers’ expect the same information about their online activity to be subject to different privacy rules depending upon the type of entity collecting their information online?

No, numerous surveys and consumer input have shown that consumers tend to support privacy structures that are responsive to the sensitivity of the information or material. I am not aware of widespread support for treating information differently based on what type or organizational structure of entity may collect, share or use it.

4. Student loan debt continues to be a major problem for many Americans, with default rates climbing up each year. Services of federal student loan debt are legally obligated, by their contracts with the Department of Education, to reach out multiple times to borrowers to help them understand all of their options as they face their obligation to repay debts. Yet, at the same time you have the TCPA, which holds those same companies strictly liable when they in good faith call a borrower who has consented to that outreach but the borrower has changed his/her number and so the call goes to someone who now answers to that reassigned number. On July 5, the FCC released its Declaratory Ruling in which you said, “we clarify that the TCPA does not apply to calls made by or on behalf of the federal government in the conduct of official government

business, except when a call made by a contractor does not comply with the government's instructions."

- a. Is it your opinion that student loan servicers, while following their legal obligations in their contracts with the Department of Education, should be exempt from TCPA? Yes or no; and if no, why?

Yes.

The Honorable Gus Bilirakis

1. In March we talked about the uncertainty facing businesses of all sizes that have sprung up from applying the outdated TCPA to modern forms of communication. Some industries have been exempted from the rules, while others are still constrained with this uncertainty and are petitioning the FCC on an individual basis. Since it doesn't appear that a TCPA overhaul is on the docket anytime soon, can we do more to expedite these petitions?

I am supportive of efforts to expedite consideration of properly submitted petitions, because the Commission's interpretation of the TCPA is preventing legitimate companies from offering legitimate services to those consumers that want them. At the current time, my colleagues at the Commission may have a different view.

2. Commissioner O'Reilly, you've recently outlined over two dozen process related areas where the FCC could improve in terms of efficiency and transparency. Are mandatory, timely responses to petitions one of those improvements that could help businesses conduct their business with certainty?

Consistent with legislation approved by this Committee, I support the establishment of deadlines for consideration of petitions submitted by outside parties. That doesn't always mean that I will approve of such petitions, but no one should have to wait years upon years for a decision by the Commission. Beyond providing certainty and finality, such deadlines would also allow petitioners to expedite judicial review, as appropriate.

3. I'm troubled by the outdated restrictions that remain in place after the required Quadrennial Review has finally been completed by the FCC. Can you explain what the potential impact of not updating ownership rules means for broadcasters and newspapers that operate in the modern, competitive media marketplace?

The Commission's unwillingness to update its media ownership rules unfairly harms broadcasters and newspapers, denying new investment opportunities for potential buyers/sellers in such markets, synergies of operations, and the ability to respond to the competitive pressures that exist in the current media environment.

The Honorable Billy Long

1. It is clear that the TCPA, which became law in 1991, is sorely out of date and in need of modernization. In your opinion, what parts of this existing law should Congress update?

While I generally refrain from offering critiques of existing laws, TCPA was crafted before the widespread deployment of wireless devices and their adoption as a substitute for landline telephones. The wireless provisions do not tend to reflect modern consumer usage. Further, TCPA is known as a “bounty statute” because of its private right of action, which has been abused by a subset of plaintiffs seeking to exploit the law for profiteering. The most significant problem with the TCPA is not with the law itself, but with the Commission’s interpretation of it, which is being challenged in court at the current time. A reasonable, but forceful, interpretation, as opposed to the one approved by the Commission last year, would provide more certainty and reduced the unnecessary petitions for relief by legitimate companies.

The Honorable Bobby Rush

1. I understand and appreciate the Commission’s desire for strong consumer protection standards, including a broad definition of personally identifiable information, but do you have any concerns about second and third order unintended effects on things that help consumers such as Caller ID or the protections provided by the Telephone Consumer Protection Act? If so, what, if anything, is being done to mitigate these effects?

Yes, I have expressed deep concerns and have dissented on items over the unintended consequences of the Commission’s actions. Unfortunately, the Commission seems determined to rush ahead to establish new regulatory burdens without clearly understanding the totality of impact, with its TCPA consolidated declaratory ruling item from last year being just one example. The Commission also shuns any effort to conduct cost-benefit analysis prior to adopting new regulations. To rectify, I have advocated that the Commission spend greater effort understanding the impact of its decisions, including conducting a full and rigorous cost-benefit analysis before adopting new rules.

The Honorable G.K. Butterfield

2. Commissioners, for the rural areas that require more broadband infrastructure investment, do you see any dangers if the Commission’s final rule on Business Data Services (special access) fails to fully recognize the real cost to provide fiber and other BDS services?

Yes, it is highly likely that, in the more rural parts of America, providers will simply choose not to invest in or build out facilities or ultimately withdraw services if they are not properly compensated.

3. If the order overshoots the mark, what could it do to rural economic development, jobs, and anchor institutions if BDS providers can’t make the investment to provide service?

Reducing competition or eliminating providers in more rural areas not only harms the businesses that seek such services, but will also reduce the benefits of those

services in which special access is a vital component. For instance, wireless providers offering broadband in these areas will have fewer choices – if any – of fiber providers needed to connect wireless towers to the Internet and other services. Overall, the Commission's item has the potential to negatively impact the development, employment and overall health of those affected communities.